

**GUARANTEED ENERGY SAVINGS
PERFORMANCE CONTRACT**

THIS GUARANTEED ENERGY SAVINGS PERFORMANCE CONTRACT (herein sometimes "Agreement" and sometimes "Contract"), made this day ____ of _____ 2015, by and between **City of West Lafayette**, Indiana, a municipal Corporation (hereinafter called "City" or "Owner") and Bowen Engineering, an Indiana corporation (hereinafter called "Contractor"),

WITNESSETH:

WHEREAS, Contractor has submitted to Owner a proposal (the "Proposal") for the installation of energy related upgrades at facilities owned by Owner and located in Tippecanoe County, Indiana (herein the "Facilities"), the specific details of such Proposal are outlined in the Exhibits attached to this Agreement; and

WHEREAS, Owner has accepted the terms of the Proposal, and the Owner and Contractor desire to enter into this Agreement in order to memorialize their respective agreements and undertakings with respect to the Project (as defined hereinafter).

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements herein contained, the parties hereto agree as follows:

1. Integration; Conflict; Agreement Conditional.

The parties hereby incorporate by reference the same as if fully set forth herein, the following documents and instruments, all of which together are herein referred to as the "Contract Documents":

- Exhibit A Scope of Work
- Exhibit B Proposal & Open Book Structure
- Exhibit C Performance Guarantee
- Exhibit D Support Services
- Exhibit E Project Completion Schedule
- Exhibit F Final Acceptance Certificate
- Exhibit G SRF and GPR Documents

The Contract Documents also shall include any permissible change orders issued pursuant to this Agreement and signed by an authorized representative of each of City and Contractor.

In the event there is a conflict between the provisions of this Agreement and any other Contract Document, the provisions of this Agreement shall be controlling with respect to the subject matter hereof.

2. Scope of Project.

For purposes hereof, the term "Project" shall mean and include the installation of the energy conservation measures and related upgrades ("ECM's" or "Energy Conservation Measures") at the Owner's Facilities as **described in Exhibit A.**

The Contractor represents (i) that the Project constitutes the installation of "energy conservation measures" as defined in I.C. 36-1-12.5-1 *et seq.* (herein the "Act"), and (ii) that this Agreement is a "guaranteed energy savings contract" as defined in the Act. The Contractor further represents that it is a "qualified provider" of "energy conservation measures", as defined in the Act. The Contractor also represents that it has issued the report containing all data and information required by I.C. 36-1-12.5-6.

The Contractor further represents that the Project will result in energy savings in the total amount of \$ 221,960 and operational savings in the total amount of \$ 2,168,640 during the twenty (20) year period following completion of the Project. The Contractor represents that such total savings in the amount of \$ 2,390,600 (herein the "Total Guaranteed Savings") exceeds the Owner's total cost of the Project. The Contractor hereby guarantees that it will reimburse the Owner for the difference between the Total Guaranteed Savings and the actual savings realized by virtue of the installation of the Energy Conservation Measures. The Total Guaranteed Savings are identified on Tables 1 through 4 attached to this Agreement and Savings Calculation documents, also attached to this Agreement (all of the foregoing, collectively, the "Savings Documents"). The Savings Documents are hereby incorporated into and made a part of this Agreement by this reference. The parties stipulate and agree that the operational, energy savings shall be considered fully satisfied upon the Owner's Final Acceptance of the Project (as defined hereinafter). The energy and operational savings will be realized over a period of twenty (20) years following final installation of the Project, which term of years the Contractor represents is less than the average life of the Energy Conservation Measures. The term of this Agreement shall extend for twenty (20) years effective with the Owner's acceptance of all Energy Conservation Measures.

3. General Obligations and Rights of Contractor.

Unless otherwise expressly provided herein or directed in writing by Owner, Contractor shall do all acts and provide all things necessary to perform and complete the Project properly, efficiently, in a good and workmanlike manner, and in compliance with all laws and regulations. Contractor shall apply for, secure, and obtain all necessary permits, fees, and licenses, which may be required in connection with the Project.

Contractor shall preserve and maintain, to the greatest extent possible and consistent with good engineering and design, the natural terrain and existing trees on the real estate, and shall remove only those trees necessary for the location of the Structure and approved by Owner for removal.

Contractor shall commence the work immediately in accordance with the Specifications and Drawings, General Conditions and Supplementary Conditions (each as defined in Exhibit A) and shall diligently prosecute and complete the Project without interruption in accordance with the Project Completion Schedule attached hereto as **Exhibit E**, subject only to work stoppages or delays due to acts of God and other causes beyond control of Contractor and not the fault of Contractor. Time is of the essence of this Contract.

Contractor shall not permit any liens for labor, materials or equipment performed or furnished in connection with the Project to be filed against the Facilities or any real estate of Owner by any person, firm or corporation and Contractor shall indemnify, defend and hold Owner and the Real Estate harmless from and against any and all such other liens, claims, suits, liability or expense (including, without limitation, attorney's fees) resulting therefrom. Contractor further agrees that upon the completion of the performance of this Contract, the Facilities and all real estate of Owner shall be free and clear of any mechanic's and materialmen's liens, not only of the Contractor but also of any and all permitted subcontractors, suppliers, materialmen, laborers or permitted sub-subcontractors, who may furnish any labor, material, services, fixtures, apparatus, machinery, equipment, improvements, repairs or alterations in connection with, or to, the Facilities, in connection with the Project referred to in this Contract.

3.1. Contractor's Representations.

Contractor hereby represents and warrants to Owner that all materials furnished by Contractor, if any, and all workmanship performed by Contractor in connection with the Project, shall be in accordance with the general industry standards of the mechanical and electrical construction industry; shall be performed in a competent, good and workmanlike manner on a timely basis and in compliance with the Contract Documents, and all pertinent laws, rules and regulations; and shall be free from any and all faults or defects in material and workmanship. Contractor further represents and warrants that the completed Project shall be suitable, fit, and capable for the intended use and purpose thereof, according to the Contract Documents. Contractor shall promptly remedy any and all defective materials or workmanship furnished by Contractor upon receipt of written notice thereof from Owner. If required by Owner, Contractor shall furnish satisfactory evidence as to kind and quality of materials and equipment used in connection with the Project.

The representations and warranties set forth herein (including, without limitation, in the incorporated Specifications and Drawings, General Conditions and Supplementary Conditions) shall continue to be effective for a period of one (1) year following Substantial Completion of the Energy Conservation Measures, after which Contractor shall thereafter be relieved of all responsibility and liability under this representation and warranty, excluding Contractor's liability for claims that arose during the warranty period. Owner shall give Contractor written notice of all defective work, specifically detailing the deficiencies to be corrected, and Contractor shall repair or otherwise remedy such defective work in an expeditious manner.

CONTRACTOR MAKES NO OTHER REPRESENTATIONS, EXPRESS OR IMPLIED, OTHER THAN THOSE REPRESENTATIONS SPECIFICALLY STATED IN THIS AGREEMENT. To the extent possible, Contractor shall assign to Owner all representations that

Contractor receives from its vendors and/or subcontractors which are or are to become permanent features of the Project.

3.2. Approvals.

Upon completion of the Project, the Contractor shall obtain approval of the installation of the Energy Conservation Measures constituting the Project from the Indiana Department of Health, the Office of the State Fire Marshal, the Office of the State Building Commissioner, and any other State agency designated by the Act or any other State statute or regulation. The installation of the Energy Conservation Measures constituted in the Project also shall be approved by an architect or engineer licensed under I.C. 25-4 or I.C. 25-31, such approval to be obtained at the expense of the contractor. The receipt of all such approvals (together collectively, the "Approvals") shall constitute a condition precedent to the Contractor's entitlement to receive the final payment of the Contract Price (as defined hereinafter) and the payment of all Retainage (as defined hereinafter) withheld with respect to each installment payment of the Contract Price.

3.3. Indemnification.

Contractor shall indemnify and hold harmless the Owner, its agents, employees and representatives, and their respective successors and assigns, and any assignee of the Contractor (all of the foregoing, collectively, the "Owner Indemnified Parties") against all liability and loss as a result of negligence or misconduct in connection with the Project by Contractor, its permitted subcontractors, or the agents, employees, or representatives of Contractor or its permitted subcontractor(s), including any injury or death sustained by or any damage to the property of any person; provided however, that Contractor shall not be responsible for any injury or death, damage, or loss, including reasonable attorneys' fees and costs or other disbursements, to the extent caused by the negligence of any Owner Indemnified Parties, nor shall Contractor be held responsible to the extent of any concurrent or contributory negligence of any Owner Indemnified Parties or non-party.

Contractor shall be liable for, and agrees to indemnify, save and hold Owner Indemnified Parties, harmless from the payment of any sum of money whatsoever (including reasonable attorneys' fees and expenses) on account of any laborer's, mechanic's, materialman's or any other lien against Owner's Facilities and property related to Contractor's performance of the Project, unless the lien is caused solely by some fault of Owner or some person or entity acting on Owner's behalf.

Owner shall indemnify, defend (at Owner's option) and hold harmless Contractor, and the officers, shareholders, directors, and employees of the Contractor (herein the "Contractor Indemnified Parties") against all liability and loss as a result of the negligence or misconduct in connection with the Project by Owner and agents, employees or representatives of Owner, including any injury (including death) sustained by or any damage to the property of, any person; provided, however, that Owner shall not be responsible for any injury (including death), damage or loss (including reasonable attorneys fees and disbursements) to the extent caused by the negligence of any Contractor Indemnified Parties, nor shall Owner be held responsible to the extent of any concurrent or contributory negligence of any Contractor Indemnified Parties.

In no event shall either Party's legal right to the use of contributory negligence as a defense or limitation of liability be limited or otherwise affected.

3.4. Bonds.

Before entering upon the performance of this Agreement, the Contractor shall execute for the benefit of Owner, a good and sufficient Performance Bond and Payment Bond, in form acceptable to Owner. Each bond shall be in an amount equal to the total Contract Price (as defined below in Section 5 of this Agreement), and the provisions of I.C. 36-1-12-13.1 and I.C. 36-1-12-14, if applicable to this Project, shall become a part of the terms of such bonds.

Notwithstanding any other provision of this Agreement or the bonds, in no event and in no manner shall coverage under the Performance Bond and Payment Bond extend to Contractor's guaranty obligations set forth in Exhibit C Performance Guarantee, or any related provisions.

3.5. Limitation of Liability.

Except for Contractor's guaranty obligations, the negligence, willful misconduct or recklessness of a party, a party's indemnification obligations under this Agreement (or breach thereof) or for any claims for bodily injury, death or damage to real or personal property, the total liability of either party to the other on all claims, whether in contract, warranty, tort, strict liability, or otherwise, arising out of the performance of this Agreement, shall not exceed the Contract Price. EXCEPT FOR THE NEGLIGENCE, WILLFUL MISCONDUCT OR RECKLESSNESS OF A PARTY, A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT (OR BREACH THEREOF), INTEREST COSTS OR OTHER COSTS WHICH OWNER MAY INCUR AS A RESULT OF CONTRACTOR'S FAILURE TO COMPLETE THE PROJECT IN A TIMELY MANNER, OR FOR ANY CLAIMS FOR BODILY INJURY, DEATH OR DAMAGE TO REAL OR PERSONAL PROPERTY, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT, CONSEQUENTIAL, SPECIAL, SPECULATIVE, PUNITIVE, OR REMOTE DAMAGES, .

3.6. Insurance. Not used. See General Conditions and Supplementary Conditions Article 5.

3.7. Environmental Protection.

Contractor shall perform all work in connection with the Project in an environmentally sound manner and shall strictly comply with all environmental protection laws and legal requirements, including, but not limited to, statutes and regulations governing the handling, generation, transportation, and disposal of hazardous waste.

Except as provided in the immediately following paragraph, should any discharge, leakage, spillage, emission, or pollution of any type (hereinafter called "Pollution") occur upon or from the Facilities due to the fault of Contractor or its subcontractors, Contractor shall clean or otherwise re-mediate such site and any other lands upon which Pollution occurs, to the satisfaction of Owner and any governmental authority having jurisdiction. Such re-mediation shall be performed by Contractor or someone hired by Contractor, at its sole cost, risk and

expense, and Contractor shall indemnify, defend and hold harmless Owner from and against all loss, costs, liability, expenses, judgment, fine, and/or penalty imposed upon or assessed against Owner as a result of any Pollution or the remediation caused by Contractor or its subcontractors; provided, however, that the foregoing shall not prevent Contractor from seeking contribution or indemnity from any other party bearing full or partial responsibility for said Pollution; and provided further, Contractor's recourse against Owner shall be limited to Owner's own direct contribution to the occurrence of the Pollution.

4. Building Insurance.

The Owner's fire and extended coverage insurance now in effect on the Facilities will cover the Owner's interest or equity in the Project; however, it will not cover the equity or interest of the Contractor nor of its materials and/or equipment at the Facilities. The coverage of the Contractor's equity and/or interest, as above, shall be the responsibility of the Contractor.

4.1. Title.

Title to all Energy Conservation Measures shall vest with the Owner upon Owner's Final Acceptance and approving payment to the Contractor. Such title shall continue to be subject to the provisions of this Agreement. It is the intent of all parties that any transfer of title to Owner pursuant to this Agreement shall occur automatically without the necessity of any bill of sale, certificate of title, or other instrument of conveyance.

The Owner shall be responsible for operating, maintaining, and insuring all Energy Conservation Measures that are installed, except as otherwise set forth in Agreement, from and after the date of Owner's Final Acceptance.

5. Contract Price and Payments.

5.1. Contract Price.

In consideration of Contractor's performance of the work necessary for the completion of the Project, Contractor shall be paid sums not to exceed the amounts **described in Exhibit B and Exhibit B-1** (herein the "Contract Price"). Any cost and expense for the installation of the Project in excess of the Contract Price shall be and remain the sole and exclusive liability and obligation of Contractor, unless such additional cost results from the issuance of a change order by Owner that is approved by Contractor and signed by an authorized representative of Contractor and Owner.

By executing this Contract, Contractor represents that it has taken steps reasonably necessary to ascertain the nature and location of the Project, and that it has investigated and satisfied itself as to the general and local conditions which can affect the Project or its costs, and has included provision for all such conditions in the Contract Price, including but not limited to: (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, or similar physical conditions at the Site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during performance of the Project. Contractor also represents that it has satisfied itself as to the character, quality, and

quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Facilities, including all exploratory work done by City, as well as from the specifications made a part of this Contract. Failure by Contractor to take the actions described and acknowledged in this paragraph will not relieve Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the Project, or for proceeding to successfully perform the Project without additional expense to City.

Prior to Substantial Completion (as defined in the General Conditions), the Owner shall retain 10 percent of the amount of each payment for the work completed. If the work has been 50 percent completed as determined by Engineer, and if the quality and progress of the work have been satisfactory to Owner and Engineer and in accordance with the Contract Documents, Owner, on recommendation of Engineer, may determine that as long as the quality and progress of the work remain satisfactory to them and in accordance with the Contract Documents, there will be no additional retainage; and 50 percent of cost of materials and equipment not incorporated in the work (with the balance being retainage). Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less 200 percent of Engineer's estimate of the value of work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

Owner shall make progress payments on account of the Contract Price on the basis of Contractor's applications for payment on or about the 15th day of each month during performance of the Project. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions

Contractor shall include in each permitted subcontract a limitation on the markup that Subcontractors can include in approved Change Orders. The cumulative total of markup (subcontractor markup plus all lower-tier subcontractor markups) shall not exceed fifteen percent (15%) of the cost of any approved Change Order. As Contractor's markup is accounted for in the fixed fee, there will be no additional Contractor's markup for changes in scope associated with Owner approved work that expends project savings and contingency dollars.

5.2. Completion and Inspection; Acceptance.

Completion and inspection will be in accordance with the Specifications and Drawings, General Conditions and Supplementary Conditions. In addition, Owner will not give Contractor notice of acceptance, **as described Exhibit F**, until Contractor has obtained all Approvals, as required by I.C. 36-1-12.5.

6. Independent Contractor.

It is understood and agreed by the parties hereto that Contractor shall perform the Project according to its own means and methods and shall for all purposes be an independent contractor. All persons employed by Contractor in connection with the Project shall be subject only to its

orders and supervision, and shall be paid directly by Contractor. Neither Owner nor its agents, servants, or employees shall have the right to direct, supervise, or control the manner or method in which Contractor or its subcontractors perform the Project, except as otherwise expressly provided herein; provided, however, Owner shall have the right to inspect the Project at any time for the purpose of determining whether the Project is being carried out in conformity with the Contract Documents.

7. Inspection; Defective Work.

The Contractor shall provide sufficient, safe, and proper facilities at all times for the inspection of the work by Owner. Contractor shall, within twenty-four (24) hours after receiving written notice from the Owner's Authorized Representative to that effect, proceed to remove from the Facilities all materials, which fail to conform to the Contract Documents.

Contractor shall retain in its records copies of all plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, accounting records, documents reflecting the unit price of construction and other writings or things which document the Project, its design, and its construction. Contractor shall maintain substantiating records for seven (7) years after the date of final payment or for any longer period of time as may be required by law or good construction practice. Contractor shall promptly make such records available for inspection by City upon request during such retention period. If Contractor receives a notification of dispute or the commencement of litigation regarding the Project within this seven (7) year period, Contractor shall continue to maintain all Project records until final resolution of the dispute or litigation.

8. Termination for Failure to Perform; Rights Thereunder.

The Contractor shall use all due diligence in an effort to complete the entire work required by this Contract within a minimum period of time. Should the Contractor at any time refuse or neglect to supply a sufficiency of properly skilled workmen or materials of the proper quality, or fail to prosecute the work with promptness and diligence, the Owner shall be at liberty, after thirty (30) days written notice to the Contractor and Contractor's failure to remedy the problem within that time period, to provide any such labor or materials and to deduct the costs thereof from any money then due or thereafter to become due to the Contractor under the Contract, and the City shall also be at liberty to terminate this Agreement with the Contractor for the Project and to enter upon the Facilities and take possession for the purpose of completing the work to be done under this Contract, to use all materials of the Contractor available for such work, and to employ any other person or persons to finish the work and to provide such additional materials therefore as may be necessary; and in case of such discontinuance of the employment of the Contractor, the Contractor shall not be entitled to receive any further payment under this Contract until the said work shall be wholly finished, at which time if the unpaid balance of the amount to be paid under the Contract shall exceed the expense incurred by the Owner in finishing the work, such excess shall be paid by the Owner to the Contractor, but if such expense shall exceed such unpaid balance, the Contractor shall pay the balance to the Owner. The expenses incurred by the Owner as herein provided, either for the furnishing of materials or for finishing the work, and any damage incurred through such fault of the Contractor shall be certified by the Owner, and payment shall be made upon such certification.

9. Extension of Time for Completion of Project.

Should the Contractor be obstructed or delayed in the prosecution or completion of the Project by the act, negligence, delay, or default of the City or by any other damage or act beyond the reasonable control of Contractor or any subcontractor, then the time herein fixed for the completion of the work shall be extended for a period equivalent to the time lost by reason of any or all of the causes aforesaid, but no such allowance shall be made unless a claim therefore is presented in writing to the Owner within two (2) business days of the occurrence of such delay. Contractor's nonperformance of its obligations under this Agreement will be excused (or, if practicable, the time period within which Contractor may perform an obligation shall be extended) if and solely to the extent: (i) Contractor's failure to perform, or failure to timely perform, an obligation results from Owner's failure to perform or failure to timely perform its responsibilities, (ii) Contractor provides Owner with prompt and reasonable notice of Owner's nonperformance, and (iii) Contractor uses commercially reasonable efforts to perform its duties notwithstanding Owner's failure to perform.

10. No Acceptance of Defective Work.

No certificate given or payment made under this Contract, except the final certificate and final payment thereon, shall be conclusive evidence of the performance of this Contract either wholly or in part; provided, that no payment or certificate, including, without limitation, the final payment and certificate, shall be construed to be an acceptance of defective work, improper materials or unauthorized substitutions.

11. City to be Held Harmless.

City shall not in any manner be answerable or accountable for any violation of the City ordinances or state or federal law by the Contractor or of anyone in its employ, nor for any loss or damage arising from negligence of the Contractor, or anyone in its employ, to any person or persons and their property, and the Contractor agrees to make good to the Owner any loss, damage, or expense incurred by the Owner by reason of any such violations or negligence, on the part of the Contractor or anyone in its employ, including any subcontractor, together with reasonable attorneys' fees.

12. Contractor to Furnish Required Statements.

The Contractor shall, at no additional cost, provide all statements, affidavits, waivers, and other instruments required by state or federal law or regulation (including, without limitation, the Act) or by City ordinances or rules, at such times and in the form required by said laws, regulations, ordinances, or rules, and the Contractor hereby acknowledges receipt of notice from the Owner to furnish same.

13. Nondiscrimination in Hiring Employees.

The Contractor, as required by I.C. 5-16-6-1 *et seq.* and I.C. 22-9-1-10, shall comply with the following:

A. The Contractor, any subcontractor, any supplier or any sub-supplier of a party to this Contract shall not discriminate against any employee or applicant for employment to be employed in the performance of this Contract with respect to his or her hire, tenure, terms, conditions, or privileges of employment or any matter directly or indirectly related to employment, because of his race, color, religion, sex, disability, national origin, or ancestry. Breach of this provision may be regarded as a material breach of this Contract.

B. This Contract involves the construction, alteration, or repair of a public building or public work, therefore the Contractor further agrees:

(1) That in the hiring of employees for the performance of work under this Contract or any subcontract hereunder, the Contractor, subcontractor or any person acting on behalf of the Contractor or subcontractor shall not, by reason of race, religion, color, sex, national origin, or ancestry, discriminate against any citizen of the State of Indiana who is qualified and available to perform the work to which the employment relates;

(2) That the Contractor, a subcontractor, or any person on his or their behalf shall not, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Contract on account of race, religion, color, sex, national origin, or ancestry;

C. The Contractor or any subcontractor of the Contractor shall be required to pay for each class of work on such project a scale of wages which shall be consistent with Davis-Bacon wage **as described in Exhibit G**. That as part of this Contract, there is incorporated by reference herein the prevailing scale of wages pursuant to I.C. 5-16-7-1 *et seq.* See additional provisions of Attachment B, Attachment C and Attachment E **as described in Exhibit G**.

14. Applicable State Laws Part of Contract - Conflict With Laws.

This Contract shall include in its terms all of the applicable laws of the State of Indiana, and any provision of this Contract, including the plans and specifications, which are a part of this Contract in conflict with the laws of the State of Indiana, are hereby declared to be inoperative, but the invalidity of any part of this Contract shall in no way affect the validity of the remainder of this Contract insofar as permitted by law. Special attention of the parties hereto is called to the I.C. 5-16-5-1 *et seq.*, as amended, I.C. 5-16-7-1 *et seq.* as amended, and I.C. 36-1-12.5-1 *et seq.* as amended, which, together with all other applicable laws, are part of this Contract.

15. Miscellaneous Provisions.

15.1. Governing Law.

This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana.

15.2. Notices.

Unless otherwise specifically provided herein, any notice, consent, request, demand, report or statement (herein "Notice"), which is required or permitted to be given to or served

upon either party hereto by the other party hereto under any of the provisions of this Agreement shall be in writing and deemed to be duly delivered when (i) personally delivered to the addressee, in the case of a Notice to be given to Contractor, or personally delivered to the addressee in the case of a Notice to be given to Owner, or (ii) upon the earlier of actual receipt or refusal of delivery when sent via traceable overnight courier (e.g., FedEx) or when sent in the United States mail, registered or certified, postage prepaid, and properly addressed as follows:

If to Owner: David M Buck, Public Works Dir.
 City of West Lafayette
 609 West Navajo Street
 West Lafayette, IN 47906-1937

If to Contractor: Jim Ankrum, Sr. Vice President
 Bowen Engineering Corporation
 8802 N. Meridian Street
 Indianapolis, IN 46260

15.3. Claims for Damages.

Any claims by either party hereto for bodily injury or damage to personal property caused by any act or omission of the other party hereto or by any of such party's employees or agents or others for whose acts it is legally liable shall be made in writing to such other party within a reasonable time after the occurrence or first knowledge of such injury or damage.

15.4. Assignment.

Without City's prior written consent, Contractor shall not, and will not, assign, subcontract, transfer, pledge, hypothecate, or grant any security interest in, or otherwise dispose of, this Agreement, or any portion of this Agreement.

Contractor, without the consent of the City, may assign its right to receive payment hereunder in whole or in part to various assignees, their agents or trustees (each and any one hereinafter referred to as an "Assignee"). Any such assignment to an Assignee may provide that Contractor or the Assignee shall act as a collection and paying agent for holders of certificates of participation in this Agreement, or may provide that a third party trustee or agent shall act as a collection and paying agent for any Assignee, provided City receives written notification of the name and address of the trustee or the agent and a copy of the pooling and fractionalization agency or trustee agreement, if any such Assignee shall have all or a part of the assigned rights of Contractor under this Agreement. Subject to the foregoing, this Agreement shall inure to the benefit of and is binding upon the heirs, executors, administrators, successors, and assigns of the parties hereto. Any assignment or reassignment of any of Contractor's right to receive payment hereunder shall be effective upon receipt by City of a duplicate original of the counterpart document by which the assignment or reassignment is made, disclosing the name and address of each such Assignee, and where applicable, to whom further payments hereunder should be made. City agrees to acknowledge, in writing, any assignments if so requested.

City agrees that, upon notice of assignment of payment rights, if so instructed, it shall pay directly to the Assignee, or its Trustee or Agent without abatement, deduction or setoff (except as permitted by this Agreement), all amounts, which become due hereunder.

Contractor does hereby assign to City, to the greatest extent permitted by law, all warranties of any manufacturer of supplies, equipment, and all other materials used in the performance of the Project. Contractor agrees to use reasonable efforts to assist City in seeking any redress under any such warranties.

15.5. Nonwaivers and Defaults.

The failure of either party hereto to insist upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provision or the relinquishment of any such rights. Except as otherwise expressly provided herein, no default by either party hereto in the performance of any of its covenants or obligations hereunder, which except for this provision would be the legal basis for the rescission or termination hereof by the other party hereto, shall give or result in such a right unless and until the party committing such default shall fail to correct the same within fifteen (15) calendar days after written notice thereof is given to such defaulting party by the other party hereto.

15.6. Remedies Cumulative.

Each remedy provided for by the Contract shall be cumulative and in addition to every other remedy provided for herein, by law or in equity.

Upon the occurrence of a default, hereunder and subject to the provisions of Section 10 hereof, either party, or its assignee, may, at its option, exercise any right, remedy, or privilege which may be available to it under applicable law, including the right to (i) proceed by appropriate court action to enforce the terms of this Agreement, (ii) recover damages for breach of this Agreement. Notwithstanding the exercise of any right, remedy or privilege, the parties shall remain liable for all covenants and indemnities under this Agreement, and for all legal fees and other costs and expenses, including court costs, incurred with respect to the enforcement of any of the remedies listed above or any other remedy available to either party to this Agreement.

Except as otherwise provided in this Contract, in the event of a claim, controversy or dispute between City and Contractor, the performance of any portion of the Project, the delivery of any materials, the payment of disputed monies or otherwise (the parties acknowledging that undisputed monies will be paid when due), City and Contractor agree that pending the resolution of such claim, controversy or dispute, City and Contractor shall continue to perform their respective obligations under this Contract without interruptions or delay, and Contractor agrees not to directly or indirectly stop or delay the performance of the Project, including the delivery of materials to the Facilities.

Notwithstanding anything herein to the contrary, in the event litigation is commenced to enforce any term or condition herein, the prevailing party in such litigation shall be entitled to reasonable litigation costs and expenses including a reasonable attorney fee.

15.7. Tests.

If the Contract Documents or the laws, ordinances, rules, or regulations of any public authority having appropriate jurisdiction require inspection, testing, or approval of any of the work, Contractor shall give the Owner timely notice of Contractor's readiness for such inspection, testing, or approval and of the date thereof so that the Owner may be present to observe such inspection, testing, or approval by such public authority. Contractor shall be responsible for and pay all costs for any such inspection, testing, or approval unless otherwise provided for herein. All required licenses, permits, or certificates applicable to any such inspection, testing, or approval shall be obtained by Contractor and promptly delivered to Owner's Authorized Representative. The obligations of Contractor under this Section 15.7 include, without limitation, the obligation to conduct all audits required by the Act (Contractor's current reporting form as of the date of this Agreement is attached hereto as **Exhibit D**).

15.8. Amendments.

No amendment, supplement, or modification hereof shall be effective for any purpose unless the same is in writing and signed by both parties hereto, and the Contractor's assignee, if any.

15.9. Headings.

The headings of sections and subsections of this Agreement are for convenience of reference only and shall not constitute, affect the meaning, construction, or effect of, any provision hereof.

15.10. Entire Agreement.

This Agreement, together with the Contract Documents, represents the entire agreement between the parties hereto and supersedes all prior negotiations, representations and agreements whether written or oral. To the extent of any conflict between this Agreement and its Exhibits and the Specifications and Drawings, General Conditions and Supplementary Conditions, the terms and conditions of this Agreement shall prevail and supersede solely to the extent of any such conflict.

Authority to Execute Contract. This Contract is executed for City of West Lafayette, Indiana pursuant to a resolution of its Board, duly adopted at its regular meeting duly called and held on _____, 2015.

[REMAINDER OF PAGE IS INTENTIONALLY BLANK]

APPROVED:

DATE: _____

**CITY OF WEST LAFAYETTE
BOARD OF PUBLIC WORKS
AND SAFETY**

John R. Dennis, Mayor (President)

Sana G. Booker, member

Tanuja R. Sheth, member

Brooke E. Folkers, member

Jonathan C. Speaker, member

ATTEST:

Clerk-Treasure Judith C. Rhodes

Date: _____

BOWEN ENGINEERING CORPORATION

By:  _____

Printed: James E. Ankrum

Its: Sr. Vice President of Procurement

ATTEST:

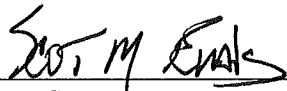
By:  _____
Its: Secretary

EXHIBIT A

SCOPE OF WORK

Projects will be completed under the conditions of the EJCDC C-700 Standard General Conditions of the Construction Contract (No. 1910-8, 1996 Edition) (the "General Conditions") as amended by the Owner's Supplementary Conditions (the "Supplementary Conditions"). The Scope of Work shall be as set forth in the GMAX Basis for the Specifications, Drawings and Project Manual (the foregoing, collectively, the "Specifications and Drawings"), and as described below. The Specifications and Drawings, General Conditions and Supplementary Conditions are hereby incorporated into, and made a part of, this Agreement by this reference. In recognition of the mutual benefits of the design build process, it is an expectation that the details of the scope of work will change as key design build decisions are made. Significant changes in scope of work will be documented by a Scope Modification Agreement.

Project: Sheraton and Fairway Knolls Lift Station & Forcemain Improvements

The scope is based upon site visits, project drawings and specifications, and the clarifications and value engineering initiatives listed below.

Value Engineering: The following value engineering options have been incorporated into the scope of work:

1. In lieu of installing new wet wells, BEC will re-use existing wet wells at each location. As a result of re-using the wet wells, new manholes redirecting flow can be eliminated.
2. Duplex submersible pumps with above grade, exposed control panels and generators will be installed in lieu of the specified building enclosures.
3. At the Sheraton site, BEC will utilize a traveling set of concrete barriers in order to keep the pedestrian pathway open. This method will remove the need for the INDOT drums, hundreds of feet of temporary concrete barrier, and sidewalk on the north side of Cumberland Avenue.
4. Various allowances and incentives have been removed. However, an overall project allowance as noted above is included in the project.
5. In order to keep vacuum truck services low, the City of West Lafayette will provide this service for utility locates as often as possible.
6. All electrical control panels and switches will be installed in NEMA 3R enclosures.

Proposal Clarifications:

1. Price does not include costs for acquiring right-of-ways, permits, or temporary and permanent easements.
2. The scope is based on the project being sales tax exempt.
3. The scope is based upon the assumption that the work will be performed during normal working hours. Holiday, weekend, and overtime costs are not included.

The City of West Lafayette, Greeley and Hansen, and Bowen Engineering will continue to explore value engineering opportunities to achieve the best value for the construction of the required scope.

EXHIBIT B

PROPOSAL & OPEN BOOK STRUCTURE

This is a "Cost Plus a Fixed Fee" proposal with a "Guaranteed Maximum Price" or "GMP". Exhibits B-1 is hereby incorporated by reference into, and made a part of, this Exhibit B. In exchange for payment by The City of West Lafayette to Contractor, Contractor shall complete, without exception, and shall furnish required process know-how, labor, supervision, materials, tools, equipment, transportation, permits, and incidentals to accomplish the Project, including, without limitation, the following:

- B-1. Construction Costs: The following project specific personnel costs including, but not limited to, Contract Manager, Project Manager, Project Engineer, Project Coordinator, Safety Manager, Corporate Safety Director (site visits only), General Superintendent (site visits only), Project Field Superintendent, Project Field Engineer are all eligible personnel. In addition the following project cost including, but not limited to, project materials, consumable materials, subcontracted work, heavy equipment usage, mobilization & demobilization costs, office/tool trailers, initial site surveying, construction laydown/parking area requirements, medium tools, dumpsters, drinking water, drawing/specification, reproductions, on-site phones, faxes, computers, printers, subsistence and other travel expenses, sanitary facilities and utility consumption charges are all eligible for reimbursement. Mobilization & demobilization is limited to 5% of construction cost on the schedule of values and the full amount will be billed in the first payment of application.
- B-2. Fixed Provider/Contractor Fee: Contractors fee for overhead and profit. The Provider/Contractor Fee will appear as a line item on the schedule of values and will progress on a percentage basis of project completion.
- B-3. Contractor's Contingency: The Contractor's GMP Proposal contains, as part of the estimated Cost of the Project, the Contractor's Contingency, a sum agreed upon to cover costs which are properly reimbursable as a Cost of the Project, whether or not such cost is the basis for a Change Order. The Contractor shall regularly (no less than on a monthly basis during the term of this Agreement) provide The City of West Lafayette with an accounting of all charges against the Contractor's Contingency.
- B-4. Final Report, Project Savings: At the time of Final Completion, the Contractor shall provide a Final Contract Price Report with an invoice to The City of West Lafayette that includes the cost of Project to date. If at such time the Final Contract Price is less than the Guaranteed Maximum Price referenced in Exhibit B-1, then the City of West Lafayette shall keep 100% of the savings.
Reports, referred to as buy sheets, will be given to The City by the Contractor monthly or bimonthly during construction documenting savings or losses.

Exhibit B-1
CONTRACTOR'S OPEN BOOK PRICING MODEL & PROPOSAL

Project: Sheraton and Fairway Knolls Lift Station & Forcemain Improvements

Construction Cost	\$ 1,763,125
Fixed Provider/Contractor Fee	\$ 226,607
Construction Contingency	\$ 125,268
Guaranteed Maximum Price	\$ 2,115,000

EXHIBIT C

PERFORMANCE GUARANTEE

SAVINGS GUARANTEE

Bowen Engineering Corporation guarantees that the program described in the Guaranteed Energy Savings Performance Contract (the "Agreement") to which this Performance Guarantee is attached as Exhibit C will recover a total of \$ **2,390,600** in energy and operational savings during the first twenty (20) years of operation, beginning on the first day of the month following completion and final acceptance by the City regarding the installation of the equipment provided under the Agreement.

If, at the end of any year during the guarantee period, the program has failed to achieve the annual guarantee of energy savings, Bowen Engineering Corporation will pay the City the difference between the annual energy guarantee and the actual energy savings amount.

Energy savings that are achieved by the upgrades and the modifications in the Agreement prior to completion of the entire retrofit project (construction period savings) will be added to the first year actual annual energy savings amount.

Bowen Engineering Corporation and the City also agree that if the actual annual energy savings amount exceeds the annual energy guarantee amount, such excess energy savings amounts will be added to the savings for any future year before calculating the savings amount.

This guarantee, whether or not exercised, is Bowen Engineering Corporation's sole liability with respect to any claim of energy savings.

METHODOLOGY

The savings are calculated using Microsoft Excel spreadsheets. All assumptions, variables, and equations are shown on each page. The total annual savings, including energy and operational, are stipulated between the City of West Lafayette and Bowen Engineering Corporation in the Agreement. Stipulated savings are savings that are agreed to be satisfied throughout the term of this performance guarantee. Any changes to the operation of the equipment or systems can be accounted for through calculation and the annual savings adjusted accordingly. The Tables below summarize the guaranteed annual savings from the calculations. This saving guarantee is dependent upon these conditions being met.

Any shortfall payments between the City and Bowen Engineering Corporation will be made within 90 days of the end of each annual period.

Table 1: Annual Savings Summary

ECM	Description	Energy Savings	Operational (Capital) Savings	Total Annual Savings
1	Lift Station & Forcemain Imp.	\$11,098	\$108,432	\$119,530

Table 2: Annual Guaranteed Savings by Year of Contract

Contract Year	Annual Savings (\$)
1	\$119,530
2	\$119,530
3	\$119,530
4	\$119,530
5	\$119,530
6	\$119,530
7	\$119,530
8	\$119,530
9	\$119,530
10	\$119,530
11	\$119,530
12	\$119,530
13	\$119,530
14	\$119,530
15	\$119,530
16	\$119,530
17	\$119,530
18	\$119,530
19	\$119,530
20	\$119,530
Total	2,390,600

Table 3: Energy Savings


<div><div>Engineering Corporation CONTRACTORS • ENGINEERS</div></div>																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																		
SAVINGS CALCULATION																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																		</

Table 4: Capital Cost Avoided Operational Savings


								
Future Capital Cost Avoidance Savings								
West Lafayette, IN								
ID	Description	RS Means Cost Data	QTY	Unit	\$/Unit	Value	% Replaced	Project Cost
1	Construction Costs	Historical Data	1	NA	NA	\$ 1,763,125	100%	\$ 1,763,125
2	Contingency	01-21-16.5-0150	\$ 1,763,125	Project	3%	\$ 52,894	100%	\$ 52,894
3	Overhead & Profit	01-91-13.80-0400	\$ 1,763,125	Project	20%	\$ 352,625	100%	\$ 352,625
TOTAL PROJECT COST=								\$ 2,168,644
Notes:						Annualized Savings = \$ 108,432		
All data based on MS Means 2010 Building Construction Data Handbook or Historical Data						Given:	Term (Years) =	20
Value = Qty x \$/Unit								
Term = life of the contract								
% Replaced = amount of system or facility that is affected through this project								

EXHIBIT D

SUPPORT SERVICES

ENERGY AUDITS

As part of the Energy Guarantee, Bowen Engineering Corporation agrees to complete the annual report to be filed with the Indiana Office of Energy & Defense (see example on this page).

Guaranteed Energy Savings Contract Annual Savings Report

Guarantee Period Covered by this Report (M/D/Yr): _____ through _____ Report Year: _____ of 10

Institution:	Contractor:
Contact:	Contact:
Phone:	Phone:
Address:	Address:

Contract Dates: Signed: _____ Expires: _____

Project Dates: Initiated: _____ Completed: _____

Total Project Cost (with Financing): _____ Total Guaranteed Savings: _____

	(A) Baseline Constant (from contract)	(B) Actual Post-Project	(C)* Adjustment	(D) ** Savings (A-B+C)	(E) Guaranteed Savings (From Contract)	(F) Difference + or - (D minus E)
1. Energy Saved (MMBTU):						0
2. Energy Costs Saved:						0
3. Operating Costs Saved:						0
4. Total Costs Saved:				\$0	\$0	0
5. Total Thru Previous Years:				\$0	\$0	0
6. Accumulated Totals Thru This Period (4 + 5)				\$0	\$0	0

* Note: Provide attachment showing all assumptions (bill totals, measurement and verification, stipulations) and calculations used to determine adjustments.

** Note: If column A, B, or C are blank or the listed savings have not been calculated using actual utility bills and operating costs, the reported figures have been stipulated and represent an estimation of savings.

Total Square Footage of Buildings in GESG: _____

Pre-project Energy Cost: _____

Buildings Included in Contract:

Savings Measures Included in Contract:
--

Name and Organization of Person Filing this Report: _____

Approved by and Title of Authorized Institution Official: _____

Send annually to the Indiana Office of Energy and Defense Development, 101 West Ohio Street, Suite 1250, Indianapolis, Indiana, 46204 no later than 60 days after the anniversary of each savings guarantee period.
Questions? Call the Division at (317) 232-8939.

EXHIBIT E

PROJECT COMPLETION SCHEDULE

Substantial Completion	9 months after notice to proceed
Define Punch List Items	After Substantial Completion
Final Project Completion	Within 60 days of Substantial Completion

EXHIBIT F

FINAL ACCEPTANCE CERTIFICATE

(TO BE COMPLETED AND SIGNED AFTER INSTALLATION OF ALL ECM'S)

Bowen Engineering Corporation
8802 N. Meridian Street
Indianapolis, IN 46260

Re: Guaranteed Energy Savings Performance Contract, dated as of _____, 2014 (the "Agreement"), between Bowen Engineering Corporation (the "Contractor") and City of West Lafayette, Indiana (the "City").

Ladies and Gentleman:

In accordance with the Agreement, the City hereby certifies and represents to, and agrees with, Bowen Engineering Corporations follows:

All of the ECM's (as defined in the Agreement) comprising the Project (as defined in the Agreement) have been delivered, installed, and accepted as of _____ (the "Completion Date").

City has conducted an inspection and/or testing of the ECM's or other measures comprising the Project as it deems necessary and appropriate and hereby acknowledges that it accepts the Project for all purposes, subject to all terms and conditions of the Agreement.

No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, a default, is known by the City to exist at the date hereof.

Sincerely,

City

By: _____
Name

Its: _____
City of West Lafayette

Date: _____

EXHIBIT G

INDIANA STATE REVOLVING FUND (SRF)

GREEN PROJECT RESERVE (GPR)

FRONT END DOCUMENTATION AND SRF REQUIREMENTS

The Project, and Contract Documents, include all requirements of the Indiana State Revolving Fund including the Green Project Reserve. The documentation immediately following this page are front end documents for SRF financing including Green Project Reserve:

1. Attachment B (front end documentation addendum from SRF website).
2. Attachment C (front end documentation addendum from SRF website).
3. Attachment E (front end documentation addendum from SRF website).
4. Copy of Davis Bacon Wage Determination used for the project.
5. DBE Packet.
6. Completed MBE/WBE Good Faith Efforts Worksheet(s).
7. Signed copy of Form OEE-1, "Certification of Nonsegregated Facilities."
8. Signed copy of Form OEE-2, "Notice to Labor Unions or Other Organizations of Workers – Nondiscrimination in Employment."
9. Completed Attachment H.

ATTACHMENT A

This attachment A is intentionally left blank.

ATTACHMENT B

FROM SRF WEBSITE FOR REQUIRED LANGUAGE

The documentation immediately following this page is an attachment from the SRF website for required language.

ATTACHMENT C

FROM SRF WEBSITE FOR REQUIRED LANGUAGE

The documentation immediately following this page is an attachment from the SRF website for required language.

ATTACHMENT E

FROM SRF WEBSITE FOR REQUIRED LANGUAGE

The documentation immediately following this page is an attachment from the SRF website for required language.

SECTION 00800

SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (No. 1910-8, 1996 Edition) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect.

The terms used in these Supplementary Conditions which are defined in the Standard General Conditions of the Construction Contract (No. 1910-8, 1996 Edition) have the meaning assigned to them in the General Conditions.

SUPPLEMENTARY CONDITIONS TO ARTICLE 1. DEFINITIONS AND TERMINOLOGY

SC-1.01A.7. In the first sentence of the paragraph 1.01.A.7. of the General Conditions delete "Advertisement or Invitation to Bid" and substitute "Notice to Bidders" therefore.

SC-1.01A.51. Add new paragraph 1.01.A.51., immediately after paragraph 1.01.A.50. of the General Conditions which shall read as follows:

51. "Additional Insureds", except where otherwise expressly defined, shall mean:

Board of Public Works and Safety, City of West Lafayette, Indiana
Greeley and Hansen LLC
Butler Fairman & Seufert, Inc.
Patriot Engineering and Environmental, Inc.
Fink, Roberts, and Petrie, Inc.
RW South, Inc.

SUPPLEMENTARY CONDITIONS TO ARTICLE 2. PRELIMINARY MATTERS

SC-2.02.A. Amend the first sentence of paragraph 2.02.A. of the General Conditions by striking out "ten" and inserting "five", and as so amended paragraph remains in effect.

SC-2.03.A. Delete paragraph 2.03.A. in its entirety and insert the following in its place:

The Contract Time will commence to run on the day indicated in the Notice to Proceed. In no event will the Contract Time commence to run later than 30 days after the Effective Date of the Agreement.

SUPPLEMENTARY CONDITIONS TO ARTICLE 4. AVAILABILITY OF LANDS;
SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

SC-4.02 In the preparation of Drawings and Specifications, ENGINEER relied upon:

4.02.A.1. The following drawings of physical conditions in or relating to existing surface and subsurface structures which are at or contiguous to the site of the work:

West Lafayette, Indiana – Normandy Park Sanitary Sewer dated 1973

The following reports of explorations and tests of subsurface conditions at the site of the work:

A reported dated August 8, 2013, titled “Geotechnical Engineering Investigation - Sheraton & Fairway Lift Station Improvements”, prepared by Patriot Engineering and Environmental, Inc., Indianapolis, Indiana.

A reported dated November 18, 2013, titled “Geotechnical Engineering Investigation - Sheraton & Fairway Lift Station Improvements Addendum No. 1”, prepared by Patriot Engineering and Environmental, Inc., Indianapolis, Indiana.

A reported dated January 10, 2014, titled “Geotechnical Engineering Investigation - Sheraton & Fairway Lift Station Improvements Addendum No. 2”, prepared by Patriot Engineering and Environmental, Inc., Indianapolis, Indiana.

The reports listed above are not part of the Contract Documents, but the “technical data” contained therein upon which Bidder is entitled to rely as provided in paragraph 4.02.B. of the General Conditions and as identified and established above are incorporated therein by reference. Bidder is not entitled to rely upon other information and data utilized by ENGINEER in the preparation of Drawings and Specifications. These reports may be examined at the office of

Greeley and Hansen, Indianapolis during regular business hours.

SUPPLEMENTARY CONDITIONS TO ARTICLE 5. BONDS AND INSURANCE

SC-5.04 The limits of liability for the insurance required by paragraph 5.04 of the General Conditions shall provide the following coverages for not less than the following amounts or greater where required by Laws and Regulations:

5.04.A.1. and 5.04.A.2. Workers' Compensation, etc. under paragraphs 5.04.A.1. and 5.04.A.2. of the General Conditions:

- | | | |
|-----|---|--------------|
| (1) | State: | Statutory |
| (2) | Applicable Federal
(e.g., Longshoreman's): | Statutory |
| (3) | Employer's Liability: | \$ 1,000,000 |

5.04.A.3., 5.04.A.4., and 5.04.A.5. Contractor's Liability Insurance under paragraphs 5.04.A.3. through 5.04.A.5. of the General Conditions which shall also include completed operations and product liability coverages and:

- | | | |
|-----|--|--------------|
| (1) | General Aggregate
(Except Products –
Completed Operations) | \$ 2,000,000 |
| (2) | Products – Completed
Operations Aggregate | \$ 2,000,000 |
| (3) | Personal and Advertising
Injury (Per Person/
Organization) | \$ 1,000,000 |
| (4) | Each Occurrence
(Bodily Injury and
Property Damage) | \$ 1,000,000 |
| (5) | Property Damage Liability Insurance will provide Explosion,
Collapse and Underground coverage where applicable. | |
| (6) | Excess Liability | |
| | General Aggregate | \$ 6,000,000 |
| | Each Occurrence | \$ 2,000,000 |

5.04.A.6. Automobile Liability:

- (1) Bodily Injury:
- | | |
|------------------|--------------|
| Each Person | \$ 500,000 |
| Each Accident | \$ 1,000,000 |
| Property Damage: | |
| Each Accident | \$ 500,000 |
- Or
- (2) Combined Single
Limit (Bodily Injury
and Property Damage): \$ 1,000,000
Each Accident \$ 1,000,000

5.04.B.1. Include on policies as additional insureds:

Board of Public Works and Safety, City of West Lafayette, Indiana
Greeley and Hansen LLC
Butler Fairman & Seufert, Inc.
Patriot Engineering and Environmental, Inc.
Fink, Roberts, and Petrie, Inc.
RW South, Inc.

5.04.B.2. Not used.
SC-5.05 Not used.

SC-5.06 Delete paragraph 5.06 of the General Conditions in its entirety and insert the following in its place:

5.06 Property Insurance

- A. CONTRACTOR shall purchase and maintain property insurance on the Work in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in these Supplementary Conditions or required by Laws and Regulations). This insurance shall:
1. include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and any other persons or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;
 2. be written on a Builder's Risk special causes of loss policy form that shall at least include insurance for physical loss and damage to the

Work, temporary buildings, falsework and Work in transit and shall insure against at least the following perils: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, and such other perils as may be specifically required by the Supplementary Conditions;

3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
4. cover materials and equipment in transit for incorporation in the Work or stored at the site or at another location that was agreed to in writing by OWNER prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by ENGINEER;
5. allow for partial utilization of the Work by OWNER;
6. include testing and startup; and
7. be maintained in effect until final payment is made unless otherwise agreed to in writing by OWNER, CONTRACTOR and ENGINEER with thirty days written notice to each other additional insured to whom a certificate of insurance has been issued.

Should any of the above described policies be cancelled before the expirations date thereof, notice will be delivered in accordance with the policy provisions.

SUPPLEMENTARY CONDITIONS TO ARTICLE 6. CONTRACTOR'S RESPONSIBILITIES

SC-6.02.B. Add the following after paragraph 6.02.B. of the General Conditions:

1. Work Hours: Perform work between 7:00 a.m. and 7:00 p.m. Mondays through Fridays only. Emergency work may be performed anytime without the OWNER's written consent required in paragraph 6.3
2. Work After Hours: Night work may be established by CONTRACTOR as regular procedure with written consent of

OWNER. Such consent, however, may be revoked at any time by OWNER if CONTRACTOR fails to maintain adequate equipment and supervision for proper prosecution and control of night work.

SC-6.02.D. Add the following after paragraph 6.02.C. of the General Conditions:

1. Payment of Resident Project Representative beyond Construction Contract Completion Time:

CONTRACTOR shall be responsible for both regular and overtime pay for Resident Project Representatives for observation of construction beyond the Contract Completion Time. This requirement is in effect during the time period from the Contract expiration date to the date on which OWNER receive written certification of completion from ENGINEER. CONTRACTOR shall NOT be responsible for Resident Project Representatives pay for authorized time extensions granted by OWNER.

Compute overtime pay at a rate of one and one-half of the regular rate of pay for Resident Project Representatives on actual hours worked. Regular and overtime payments will be accumulated monthly and deducted from CONTRACTOR's monthly partial payment estimates.

SC-6.06.B. Add the following after paragraph 6.06.B. of the General Conditions:

1. Within 15 days after the effective date of the Agreement, CONTRACTOR shall submit to ENGINEER for review a list in duplicate of the names of proposed manufacturers, materialmen, suppliers and subcontractors. Obtain approval of this list by OWNER prior to submission of any shop drawings or product data.

SC-6.08 Add the following 6.08.B, 6.08.C after paragraph 6.08.A. of the General Conditions:

SC-6.08.B. OWNER has obtained the following permits:

1. Indiana Department of Environmental Management Construction Permit
2. Tippecanoe County Soil and Water Conservation District / IDEM Rule 5 General Storm Water Runoff Permit
3. Tippecanoe County Petition to Encroach on a Regulated Drain

SC-6.08.C. CONTRACTOR shall comply with all permit conditions that apply to the Work or execution thereof. Conditions that apply include:

1. Deposition of excavated materials and all earthwork operations will be carried out in such a manner that soil erosion and sediment runoff to any nearby watercourse are controlled and minimized.
2. Compliance with Federal and State laws that require Work to stop and the following offices to be notified if any archaeological artifacts are uncovered during construction:

Division of Historic Preservation
(317-232-1646)

Department of the Army Corps of Engineers
(313-226-2222)

3. The CONTRACTOR shall not impede the navigation of such waters, nor injure, damage, impair or endanger any bridge, highway, railroad, public work or utility, or the property of a riparian owner, adjoining proprietor or adjacent permittee, nor endanger the safety of the public or lives of individuals.

SC-6.09.D. Add the following new paragraph after paragraph 6.09.C. of the General Conditions which shall read as follows:

D. Financing of this project will be through the State Revolving Fund administered by the Indiana Finance Authority.

SC-6.10 Add the following language at the end of paragraph 6.10 of the General Conditions:

Materials and equipment that are purchased for this project that will become the property of the OWNER are exempt from sales tax. CONTRACTORS purchasing materials or equipment for the project shall register with the Indiana Department of Revenue for the sales tax exemption. To register, a federal tax ID number, a business address and a fee are required.

SC-6.13 Add the following new paragraphs 6.13.A.4., 6.13.A.5., 6.13.A.6., and 6.13.A.7. after paragraph 6.13.A.3. of the General Conditions which shall read as follows:

4. No Duty. The duty of the OWNER or ENGINEER to observe CONTRACTOR's performance does not include any review of the adequacy of CONTRACTOR's safety measures in, on, or near the Work site or sites. ENGINEER has not been retained or compensated to provide design and construction review services relating to CONTRACTOR's safety precautions required for CONTRACTOR to perform the Work.
5. No Liability. Neither the OWNER, nor any official or employee of the OWNER, nor the ENGINEER, or any authorized assistant or agent of any of them, shall be responsible for safety precautions and programs in connection with the Work or any liability arising therefrom.
6. Protection of OWNER's Operations. The CONTRACTOR shall take all necessary precautions so as to cause no unauthorized interruption in any essential part of the wastewater sewer system. Sewer system operations must be maintained at the same level during construction as existed prior to construction.

Shutdowns for construction Work shall be scheduled in advance (minimum 14 days advance notice), carefully planned, and shall be carried out in close cooperation with the OWNER.

The OWNER shall retain the authority to require the cessation of construction activities and return to service of any component of the wastewater collection system should the need arise.

7. Special Requirements for Structural Design. All structures to be provided by the CONTRACTOR, (except those structures for which details are shown on the Drawings), that require structural design shall be designed and constructed under the observation of a structural engineer, registered in the State of the Project, acting for and retained by the CONTRACTOR. Drawings and calculations for such structures shall be prepared and sealed by the structural engineer and submitted to the ENGINEER for record. A clear outline of the proposed construction procedure shall be shown on the drawings. A statement in writing by the structural engineer attesting that said engineer has visited the Work site or sites, that the design does satisfy the conditions as actually encountered and that the actual construction conforms to the drawings and calculations, as submitted, must be submitted to the ENGINEER before the Work related to such structures will be considered complete.

All temporary structures, including sheeting and bracing for excavations, that affect the safety of the public, workmen, inspectors, or OWNER's or ENGINEER's personnel shall be regarded as structures that require structural design.

SC-6.17.E Add a new paragraph 6.17.E.4. immediately after paragraph 6.17.E.3. of the General Conditions which is to read as follows:

4. ENGINEER, generally, will process shop drawings and return them to the CONTRACTOR in not more than 10 working days from day of receipt. If the nature of the shop drawing is such that the review cannot be completed in 10 working days, ENGINEER will advise the CONTRACTOR giving a schedule for performing the review.

SC-6.21 Add a new paragraph 6.21 immediately after paragraph 6.20 of the General Conditions which is to read as follows:

6.21 Confined Space Entry

CONTRACTOR shall be responsible for establishing and implementing a confined space entry program in accordance with 29 CFR 1910 and other pertinent laws or regulations. CONTRACTOR shall require all subcontractors to implement and comply with CONTRACTOR's confined space entry program.

SUPPLEMENTARY CONDITIONS TO ARTICLE 7. OTHER WORK

SC-7.02 Add a new paragraph 7.02.C. immediately after paragraph 7.02.B. of the General Conditions which shall read as follows:

- C. Should CONTRACTOR cause damage to the Work or property of any separate CONTRACTOR at the site, or should any claim arising out of CONTRACTOR's performance of the Work at the site be made by any separate contractor against CONTRACTOR, OWNER, ENGINEER, ENGINEER's Consultants, or any other person, CONTRACTOR shall promptly attempt to settle with such other contractor by agreement, or to otherwise resolve the dispute by arbitration or at law. CONTRACTOR shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold OWNER, ENGINEER, and ENGINEER's Consultants harmless from and against all claims, damages, losses and expenses (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court and arbitration costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any separate contractor against OWNER, ENGINEER, or

ENGINEER's Consultants to the extent based on a claim arising out of CONTRACTOR's performance of the Work. Should a separate contractor cause damage to the Work or property of CONTRACTOR or should the performance of Work by any separate contractor at the site give rise to any other claim, CONTRACTOR shall not institute any action, legal or equitable, against OWNER, ENGINEER, or ENGINEER's Consultants or permit any action against any of them to be maintained and continued in its name or for its benefit in any court or before any arbiter which seeks to impose liability on or to recover damages from OWNER, ENGINEER, or ENGINEER's Consultants on account of any such damage or claim. If CONTRACTOR is delayed at any time in performing or furnishing Work by any act or neglect of a separate contractor and OWNER and CONTRACTOR are unable to agree as to the extent of any adjustment in Contract Times attributable thereto, CONTRACTOR may make a claim for an extension of times in accordance with Article 12. An extension of the Contract Times shall be CONTRACTOR's exclusive remedy with respect to OWNER, ENGINEER, and ENGINEER's Consultants for any delay, disruption, interference or hindrance caused by any separate contractor. This paragraph does not prevent recovery from OWNER, ENGINEER, or ENGINEER's consultant for activities that are their respective responsibilities.

SUPPLEMENTARY CONDITIONS TO ARTICLE 9. ENGINEER'S STATUS DURING CONSTRUCTION

SC-9.04 Delete the first sentence of paragraph 9.04A of the General Conditions and insert the following in its place:

- A. ENGINEER will issue, within five working days of receipt, such written clarifications or interpretations of the requirement of the Contract Documents (in the form of Drawings or otherwise) as ENGINEER may determine necessary, which shall be consistent with the intent of and reasonably inferable from Contract Documents. If ENGINEER determines, based upon the nature of the requested clarification or interpretation, that the response cannot be furnished in five working days, ENGINEER will advise the CONTRACTOR giving a schedule for furnishing the information.

SUPPLEMENTARY CONDITIONS TO ARTICLE 11. COST OF WORK; CASH ALLOWANCES; UNIT PRICE WORK

SC-11.03 Delete paragraph 11.03.C of the General Conditions in its entirety and insert the following in its place:

- C. The unit price of an item of Unit Price Work shall be subject to re-evaluation and adjustment under the following conditions:
1. If the total cost of a particular item of Unit Price Work amounts to 5 percent or more of the Contract Price and the variation in the quantity of that particular item of Unit Price Work performed by Contractor differs by more than 25 percent from the estimated quantity of such item indicated in the Agreement: and
 2. If there is no corresponding adjustment with respect to any other item of Work; and
 3. If CONTRACTOR believes that CONTRACTOR has incurred additional expense as a result thereof; or if OWNER believes that the quantity variation entitles OWNER to an adjustment in the unit price, either OWNER or CONTRACTOR may make a claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if the parties are unable to agree as to the effect of any such variations in the quantity of Unit Price Work performed.

SUPPLEMENTARY CONDITIONS TO ARTICLE 12. CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

SC-12.06 Delete paragraph 12.06 of the General Conditions in its entirety and insert the following in its place:

12.06 Delay Damages

- A. No claim for payment, compensation or adjustment of any kind (other than the extensions of time provided for herein) shall be made or asserted against the OWNER or ENGINEER by the CONTRACTOR for damages caused by hindrances or delays from any cause, whether such hindrances or delays be avoidable or unavoidable, and the CONTRACTOR shall make no claim for damages by reason of any such hindrances or delays, and will accept in full satisfaction of such hindrances or delays an extension of time to complete the performance of the Work as specified.

SUPPLEMENTARY CONDITIONS TO ARTICLE 13. TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

SC-13.03 Delete paragraph 13.03.B of the General Conditions in its entirety and insert the following in its place:

- B. Contractor shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests or approvals required by the Contract Documents except as otherwise specifically provided in the Contract Documents.

SUPPLEMENTARY CONDITIONS TO ARTICLE 14. PAYMENTS TO CONTRACTOR AND COMPLETION

SC-14.05 Add a new paragraph immediately after paragraph 14.05.A.2. of the General Conditions, which is to read as follows:

- 3. OWNER may at any time request CONTRACTOR in writing to permit OWNER to take over operation of any such part of the Work although it is not substantially complete. A copy of such request will be sent to ENGINEER and within a reasonable time thereafter OWNER, CONTRACTOR and ENGINEER shall make an inspection of that part of the Work to determine its status of completion and will prepare a list of the items remaining to be completed or corrected thereon before final payment. If CONTRACTOR does not object in writing to OWNER and ENGINEER that such part of the Work is not ready for separate operation by OWNER, ENGINEER will finalize the list of items to be completed or corrected and will deliver such lists to OWNER and CONTRACTOR together with a written recommendation as to the division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, maintenance, utilities, insurance warranties and guarantees for that part of the Work which will become binding upon OWNER and CONTRACTOR at the time when OWNER takes over such operation (unless they shall have otherwise agreed in writing and so informed ENGINEER). During such operation and prior to Substantial Completion of such part of the Work, OWNER shall allow CONTRACTOR reasonable access to complete or correct items on said list and to complete other related Work.

SC-14.10 Add a new paragraph immediately after paragraph 14.09 of the General Conditions, which is to read as follows:

14.10 Audits, Access to Records

- A. The Contractor shall maintain books, records, documents, and other evidence directly pertinent to performance of work under this

agreement in accordance with generally accepted accounting principles and practices consistently applied in effect on the date of execution of this agreement. The Contractor shall also maintain the financial information and data used by the Contractor in the preparation or support of the cost submission required for any negotiated change order and a copy of the cost summary submitted to the OWNER.

- B. The OWNER or any of its authorized representatives shall have access to all such books, records, documents, and other evidence for the purpose of inspection, audit and copying during normal business hours. The Contractor will provide proper facilities for such access and inspection.
- C. The Contractor agrees to make paragraphs A. through C. of this clause applicable to all negotiated change orders and agreement amendments affecting the agreement price.
- D. Audits conducted under this provision shall be in accordance with generally accepted auditing standards.

SUPPLEMENTARY CONDITIONS TO ARTICLE 17. MISCELLANEOUS

SC-17.06 Add a new paragraph immediately after paragraph 17.05 of the General Conditions, which is to read as follows:

17.06 Wage Rates

Wage rates for the Work shall not be less than the prescribed United States Department of Labor, General Decision No. IN140006 attached as **Exhibit A** to these Supplementary Conditions, as modified and in effect on the date of receipt of sealed Bids provided in Section 00100 Notice to Bidders.

Bidders may obtain the wage rates from the following website:

<http://www.wdol.gov/dba.aspx>

- 1) Browse All Determinations By State
- 2) Click on Indiana
- 3) Select Tippecanoe County – Heavy or Highway

SC-17.07 Add a new paragraph immediately after paragraph 17.06 of the General Conditions, which is to read as follows:

17.07 Disadvantaged Business Enterprise:

The CONTRACTOR shall take all necessary affirmative steps to assure that minority and women's business enterprises are used when possible. Affirmative steps shall include taking the following actions for all of these three (3) types of enterprises:

- A. Placing qualified enterprises on solicitation lists.
- B. Assuring that these enterprises are solicited whenever they are potential sources.
- C. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by these enterprises.
- D. Establishing delivery schedules, where the requirement permits, which encourage participation by these enterprises.
- E. Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
- F. Requiring each subcontractor to take the affirmative steps A. through E. above.

Disadvantaged Business Enterprise forms and guidance are attached as **Exhibit B** to the Supplementary Conditions.

SC-17.08 Add a new paragraph immediately after paragraph 17.07 of the General Conditions, which is to read as follows:

17.08 Prohibition of Discrimination

The CONTRACTOR agrees:

- A. That in the hiring of employees for the performance of work under this Contract or any subcontract hereunder, no contractor, or subcontractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, religion, color, sex, national origin or ancestry, discriminate against any citizen of the state of Indiana who is qualified and available to perform the work to which the employment relates;
- B. That no contractor, subcontractor, or any person on his behalf shall in any manner, discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, religion, color, sex, national origin or ancestry;

- C. That there may be deducted from the amount payable to the contractor under this contract, a penalty of five dollars [\$5.00] for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the Contract; and
- D. That this Contract may be canceled or terminated by the OWNER and all money due to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this section of the Contract.

SC-17.09 Add a new paragraph immediately after paragraph 17.08 of the General Conditions, which is to read as follows:

17.09 Severability

- A. If any portion of the Contract Documents is invalid or unenforceable pursuant to applicable law, such portion shall be void in the jurisdiction where it is invalid or unenforceable, and the remainder of the Contract Documents shall remain binding upon the parties hereto.

SC-17.10 Add a new paragraph immediately after paragraph 17.09 of the General Conditions, which is to read as follows:

17.10 Compliance With E-Verify Program.

- A. Pursuant to IC 22-5-1.7, CONTRACTOR shall enroll in and verify the work eligibility status of all newly hired employees of CONTRACTOR through the E-Verify Program ("Program"). CONTRACTOR is not required to verify the work eligibility status of all newly hired employees through the Program if the Program no longer exists.
- B. CONTRACTOR and its Subcontractors shall not knowingly employ or contract with an unauthorized alien or retain an employee or contract with a person that CONTRACTOR or its Subcontractor subsequently learns is an unauthorized alien. If CONTRACTOR violates this Section 17.10, OWNER shall require CONTRACTOR to remedy the violation not later than thirty (30) days after OWNER notifies CONTRACTOR. If CONTRACTOR fails to remedy the violation within the thirty (30) day period, OWNER shall terminate the contract for breach of contract. If OWNER terminates the contract, CONTRACTOR shall, in addition to any other contractual remedies, be liable to OWNER for actual damages. There is a rebuttable presumption that CONTRACTOR did not knowingly employ an

unauthorized alien if CONTRACTOR verified the work eligibility status of the employee through the Program.

- C. If CONTRACTOR employs or contracts with an unauthorized alien but OWNER determines that terminating the contract would be detrimental to the public interest or public property, OWNER may allow the contract to remain in effect until OWNER procures a new contractor.
- D. CONTRACTOR shall, prior to performing any work, require each Subcontractor to certify to CONTRACTOR that the Subcontractor does not knowingly employ or contract with an unauthorized alien and has enrolled in the Program. CONTRACTOR shall maintain on file a certification from each Subcontractor throughout the duration of the Project. If CONTRACTOR determines that a Subcontractor is in violation of this Section 17.10, CONTRACTOR may terminate its contract with the Subcontractor for such violation. Such termination may not be considered a breach of contract by CONTRACTOR or the Subcontractor.
- E. CONTRACTOR and its Subcontractors shall, prior to performing any work, submit executed affidavits which state they will not knowingly employ illegal aliens. An affidavit (approved by the State Board of Accounts) can be obtained from the following website:
<http://www.citiesandtowns.org/egov/docs>.

END OF SECTION

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Law.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and



AMERICAN CONSULTING
ENGINEERS COUNCIL

Issued and Published Jointly By



**National Society of
Professional Engineers**
Professional Engineers in Private Practice



AMERICAN SOCIETY OF
CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
a practice division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN CONSULTING ENGINEERS COUNCIL

AMERICAN SOCIETY OF CIVIL ENGINEERS

This document has been approved and endorsed by

The Associated General



Contractors of America

Construction Specifications Institute



These General Conditions have been prepared for use with the Owner-Contractor Agreements (No. 1910-8-A-1 or 1910-8-A-2) (1996 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the EJCDC User's Guide (No. 1910-50). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (No. 1910-17) (1996 Edition).

EJCDC No. 1910-8 (1996 Edition)

Copyright ©1996

National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314

American Consulting Engineers Council
1015 15th Street N.W., Washington, DC 20005

American Society of Civil Engineers
345 East 47th Street, New York, NY 10017

TABLE OF CONTENTS

	Page
ARTICLE 1 - DEFINITIONS AND TERMINOLOGY	00700 - 6
1.01 <i>Defined Terms</i>	00700 - 6
1.02 <i>Terminology</i>	00700 - 8
ARTICLE 2 - PRELIMINARY MATTERS	00700 - 9
2.01 <i>Delivery of Bonds</i>	00700 - 9
2.02 <i>Copies of Documents</i>	00700 - 9
2.03 <i>Commencement of Contract Times; Notice to Proceed</i>	00700 - 9
2.04 <i>Starting the Work</i>	00700 - 9
2.05 <i>Before Starting Construction</i>	00700 - 9
2.06 <i>Preconstruction Conference</i>	00700 - 10
2.07 <i>Initial Acceptance of Schedules</i>	00700 - 10
ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE	00700 - 10
3.01 <i>Intent</i>	00700 - 10
3.02 <i>Reference Standards</i>	00700 - 10
3.03 <i>Reporting and Resolving Discrepancies</i>	00700 - 11
3.04 <i>Amending and Supplementing Contract Documents</i>	00700 - 11
3.05 <i>Reuse of Documents</i>	00700 - 11
ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS	00700 - 11
4.01 <i>Availability of Lands</i>	00700 - 11
4.02 <i>Subsurface and Physical Conditions</i>	00700 - 12
4.03 <i>Differing Subsurface or Physical Conditions</i>	00700 - 12
4.04 <i>Underground Facilities</i>	00700 - 13
4.05 <i>Reference Points</i>	00700 - 13
4.06 <i>Hazardous Environmental Condition at Site</i>	00700 - 14
ARTICLE 5 - BONDS AND INSURANCE	00700 - 15
5.01 <i>Performance, Payment, and Other Bonds</i>	00700 - 15
5.02 <i>Licensed Sureties and Insurers</i>	00700 - 15
5.03 <i>Certificates of Insurance</i>	00700 - 15
5.04 <i>CONTRACTOR's Liability Insurance</i>	00700 - 15
5.05 <i>OWNER's Liability Insurance</i>	00700 - 16
5.06 <i>Property Insurance</i>	00700 - 16
5.07 <i>Waiver of Rights</i>	00700 - 17
5.08 <i>Receipt and Application of Insurance Proceeds</i>	00700 - 18
5.09 <i>Acceptance of Bonds and Insurance; Option to Replace</i>	00700 - 18
5.10 <i>Partial Utilization, Acknowledgment of Property Insurer</i>	00700 - 18
ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES	00700 - 18
6.01 <i>Supervision and Superintendence</i>	00700 - 18
6.02 <i>Labor; Working Hours</i>	00700 - 19
6.03 <i>Services, Materials, and Equipment</i>	00700 - 19
6.04 <i>Progress Schedule</i>	00700 - 19
6.05 <i>Substitutes and "Or-Equals"</i>	00700 - 19
6.06 <i>Concerning Subcontractors, Suppliers, and Others</i>	00700 - 20
6.07 <i>Patent Fees and Royalties</i>	00700 - 21
6.08 <i>Permits</i>	00700 - 21
6.09 <i>Laws and Regulations</i>	00700 - 22
6.10 <i>Taxes</i>	00700 - 22
6.11 <i>Use of Site and Other Areas</i>	00700 - 22
6.12 <i>Record Documents</i>	00700 - 22
6.13 <i>Safety and Protection</i>	00700 - 23
6.14 <i>Safety Representative</i>	00700 - 23
6.15 <i>Hazard Communication Programs</i>	00700 - 23

6.16	<i>Emergencies</i>	00700 - 23
6.17	<i>Shop Drawings and Samples</i>	00700 - 23
6.18	<i>Continuing the Work</i>	00700 - 24
6.19	<i>CONTRACTOR's General Warranty and Guarantee</i>	00700 - 25
6.20	<i>Indemnification</i>	00700 - 25
ARTICLE 7 - OTHER WORK		00700 - 26
7.01	<i>Related Work at Site</i>	00700 - 26
7.02	<i>Coordination</i>	00700 - 26
ARTICLE 8 - OWNER'S RESPONSIBILITIES		00700 - 26
8.01	<i>Communications to Contractor</i>	00700 - 26
8.02	<i>Replacement of ENGINEER</i>	00700 - 26
8.03	<i>Furnish Data</i>	00700 - 26
8.04	<i>Pay Promptly When Due</i>	00700 - 26
8.05	<i>Lands and Easements; Reports and Tests</i>	00700 - 26
8.06	<i>Insurance</i>	00700 - 27
8.07	<i>Change Orders</i>	00700 - 27
8.08	<i>Inspections, Tests, and Approvals</i>	00700 - 27
8.09	<i>Limitations on OWNER's Responsibilities</i>	00700 - 27
8.10	<i>Undisclosed Hazardous Environmental Condition</i>	00700 - 27
8.11	<i>Evidence of Financial Arrangements</i>	00700 - 27
ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION		00700 - 27
9.01	<i>OWNER'S Representative</i>	00700 - 27
9.02	<i>Visits to Site</i>	00700 - 27
9.03	<i>Project Representative</i>	00700 - 27
9.04	<i>Clarifications and Interpretations</i>	00700 - 28
9.05	<i>Authorized Variations in Work</i>	00700 - 28
9.06	<i>Rejecting Defective Work</i>	00700 - 28
9.07	<i>Shop Drawings, Change Orders and Payments</i>	00700 - 28
9.08	<i>Determinations for Unit Price Work</i>	00700 - 28
9.09	<i>Decisions on Requirements of Contract Documents and Acceptability of Work</i>	00700 - 28
9.10	<i>Limitations on ENGINEER's Authority and Responsibilities</i>	00700 - 28
ARTICLE 10 - CHANGES IN THE WORK; CLAIMS		00700 - 29
10.01	<i>Authorized Changes in the Work</i>	00700 - 29
10.02	<i>Unauthorized Changes in the Work</i>	00700 - 29
10.03	<i>Execution of Change Orders</i>	00700 - 29
10.04	<i>Notification to Surety</i>	00700 - 29
10.05	<i>Claims and Disputes</i>	00700 - 30
ARTICLE 11 - COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK		00700 - 30
11.01	<i>Cost of the Work</i>	00700 - 30
11.02	<i>Cash Allowances</i>	00700 - 32
11.03	<i>Unit Price Work</i>	00700 - 32
ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES		00700 - 33
12.01	<i>Change of Contract Price</i>	00700 - 33
12.02	<i>Change of Contract Times</i>	00700 - 33
12.03	<i>Delays Beyond CONTRACTOR's Control</i>	00700 - 33
12.04	<i>Delays Within CONTRACTOR's Control</i>	00700 - 34
12.05	<i>Delays Beyond OWNER's and CONTRACTOR's Control</i>	00700 - 34
12.06	<i>Delay Damages</i>	00700 - 34
ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK		00700 - 34
13.01	<i>Notice of Defects</i>	00700 - 34
13.02	<i>Access to Work</i>	00700 - 34
13.03	<i>Tests and Inspections</i>	00700 - 34
13.04	<i>Uncovering Work</i>	00700 - 35
13.05	<i>OWNER May Stop the Work</i>	00700 - 35
13.06	<i>Correction or Removal of Defective Work</i>	00700 - 35

13.07	<i>Correction Period</i>	00700 - 35
13.08	<i>Acceptance of Defective Work</i>	00700 - 36
13.09	<i>OWNER May Correct Defective Work</i>	00700 - 36
ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION		00700 - 36
14.01	<i>Schedule of Values</i>	00700 - 36
14.02	<i>Progress Payments</i>	00700 - 37
14.03	<i>CONTRACTOR's Warranty of Title</i>	00700 - 38
14.04	<i>Substantial Completion</i>	00700 - 38
14.05	<i>Partial Utilization</i>	00700 - 39
14.06	<i>Final Inspection</i>	00700 - 39
14.07	<i>Final Payment</i>	00700 - 39
14.08	<i>Final Completion Delayed</i>	00700 - 40
14.09	<i>Waiver of Claims</i>	00700 - 40
ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION		00700 - 40
15.01	<i>OWNER May Suspend Work</i>	00700 - 40
15.02	<i>OWNER May Terminate for Cause</i>	00700 - 40
15.03	<i>OWNER May Terminate For Convenience</i>	00700 - 41
15.04	<i>CONTRACTOR May Stop Work or Terminate</i>	00700 - 41
ARTICLE 16 - DISPUTE RESOLUTION		00700 - 41
16.01	<i>Methods and Procedures</i>	00700 - 41
ARTICLE 17 - MISCELLANEOUS		00700 - 42
17.01	<i>Giving Notice</i>	00700 - 42
17.02	<i>Computation of Times</i>	00700 - 42
17.03	<i>Cumulative Remedies</i>	00700 - 42
17.04	<i>Survival of Obligations</i>	00700 - 42
17.05	<i>Controlling Law</i>	00700 - 42

GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Contract Documents and printed with initial or all capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof.

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the Contract Documents.

2. *Agreement*--The written instrument which is evidence of the agreement between OWNER and CONTRACTOR covering the Work.

3. *Application for Payment*--The form acceptable to ENGINEER which is to be used by CONTRACTOR during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

5. *Bid*--The offer or proposal of a bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

6. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

7. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, Bid security form, if any, and the Bid form with any supplements.

8. *Bonds*--Performance and payment bonds and other instruments of security.

9. *Change Order*--A document recommended by ENGINEER which is signed by CONTRACTOR and OWNER and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the

Contract Times, issued on or after the Effective Date of the Agreement.

10. *Claim*--A demand or assertion by OWNER or CONTRACTOR seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. *Contract*--The entire and integrated written agreement between the OWNER and CONTRACTOR concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*--The Contract Documents establish the rights and obligations of the parties and include the Agreement, Addenda (which pertain to the Contract Documents), CONTRACTOR's Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and ENGINEER's written interpretations and clarifications issued on or after the Effective Date of the Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard copies of the items listed in this paragraph are Contract Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by OWNER to CONTRACTOR are not Contract Documents.

13. *Contract Price*--The moneys payable by OWNER to CONTRACTOR for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of paragraph 11.03 in the case of Unit Price Work).

14. *Contract Times*--The number of days or the dates stated in the Agreement to: (i) achieve Substantial Completion; and (ii) complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of final payment.

15. *CONTRACTOR*--The individual or entity with whom OWNER has entered into the Agreement.

16. *Cost of the Work*--See paragraph 11.01.A for definition.

17. *Drawings*--That part of the Contract Documents prepared or approved by ENGINEER which graphically shows the scope, extent, and character of the Work to be performed by CONTRACTOR. Shop Drawings and other CONTRACTOR submittals are not Drawings as so defined.

18. *Effective Date of the Agreement*--The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

19. *ENGINEER*--The individual or entity named as such in the Agreement.

20. *ENGINEER's Consultant*--An individual or entity having a contract with ENGINEER to furnish services as ENGINEER's independent professional associate or consultant with respect to the Project and who is identified as such in the Supplementary Conditions.

21. *Field Order*--A written order issued by ENGINEER which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

22. *General Requirements*--Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

23. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

24. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

25. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

26. *Liens*--Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

27. *Milestone*--A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

28. *Notice of Award*--The written notice by OWNER to the apparent successful bidder stating that upon timely compliance by the apparent successful bidder with the conditions precedent listed therein, OWNER will sign and deliver the Agreement.

29. *Notice to Proceed*--A written notice given by OWNER to CONTRACTOR fixing the date on which the Contract Times will commence to run and on which CONTRACTOR shall start to perform the Work under the Contract Documents.

30. *OWNER*--The individual, entity, public body, or authority with whom CONTRACTOR has entered into the Agreement and for whom the Work is to be performed.

31. *Partial Utilization*--Use by OWNER of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

32. *PCBs*--Polychlorinated biphenyls.

33. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

34. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part as may be indicated elsewhere in the Contract Documents.

35. *Project Manual*--The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

36. *Radioactive Material*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

37. *Resident Project Representative*--The authorized representative of ENGINEER who may be assigned to the Site or any part thereof.

38. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

39. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for CONTRACTOR and submitted by CONTRACTOR to illustrate some portion of the Work.

40. *Site*--Lands or areas indicated in the Contract Documents as being furnished by OWNER upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by OWNER which are designated for the use of CONTRACTOR.

41. *Specifications*--That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

42. *Subcontractor*--An individual or entity having a direct contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work at the Site.

43. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

44. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements these General Conditions.

45. *Supplier*--A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with CONTRACTOR or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by CONTRACTOR or any Subcontractor.

46. *Underground Facilities*--All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases,

steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

47. *Unit Price Work*--Work to be paid for on the basis of unit prices.

48. *Work*--The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

49. *Work Change Directive*--A written statement to CONTRACTOR issued on or after the Effective Date of the Agreement and signed by OWNER and recommended by ENGINEER ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

50. *Written Amendment*--A written statement modifying the Contract Documents, signed by OWNER and CONTRACTOR on or after the Effective Date of the Agreement and normally dealing with the nonengineering or nontechnical rather than strictly construction-related aspects of the Contract Documents.

1.02 Terminology

A. Intent of Certain Terms or Adjectives

1. Whenever in the Contract Documents the terms "as allowed," "as approved," or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of ENGINEER as to the Work, it is intended that such action or determination will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The

use of any such term or adjective shall not be effective to assign to ENGINEER any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.10 or any other provision of the Contract Documents.

B. Day

1. The word "day" shall constitute a calendar day of 24 hours measured from midnight to the next midnight.

C. Defective

1. The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER's recommendation of final payment (unless responsibility for the protection thereof has been assumed by OWNER at Substantial Completion in accordance with paragraph 14.04 or 14.05).

D. Furnish, Install, Perform, Provide

1. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of CONTRACTOR, "provide" is implied.

E. Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 - PRELIMINARY MATTERS

2.01 Delivery of Bonds

A. When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds as CONTRACTOR may be required to furnish.

2.02 Copies of Documents

A. OWNER shall furnish to CONTRACTOR up to ten copies of the Contract Documents. Additional copies will be furnished upon request at the cost of reproduction.

2.03 Commencement of Contract Times; Notice to Proceed

A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

2.04 Starting the Work

A. CONTRACTOR shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.05 Before Starting Construction

A. *CONTRACTOR's Review of Contract Documents:* Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. CONTRACTOR shall promptly report in writing to ENGINEER any conflict, error, ambiguity, or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from ENGINEER before proceeding with any Work affected thereby; however, CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless CONTRACTOR knew or reasonably should have known thereof.

B. *Preliminary Schedules:* Within ten days after the Effective Date of the Agreement (unless otherwise specified

in the General Requirements), CONTRACTOR shall submit to ENGINEER for its timely review:

1. a preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2. a preliminary schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing, and processing such submittal; and

3. a preliminary schedule of values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

C. *Evidence of Insurance:* Before any Work at the Site is started, CONTRACTOR and OWNER shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which CONTRACTOR and OWNER respectively are required to purchase and maintain in accordance with Article 5.

2.06 *Preconstruction Conference*

A. Within 20 days after the Contract Times start to run, but before any Work at the Site is started, a conference attended by CONTRACTOR, ENGINEER, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph 2.05.B, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

2.07 *Initial Acceptance of Schedules*

A. Unless otherwise provided in the Contract Documents, at least ten days before submission of the first Application for Payment a conference attended by CONTRACTOR, ENGINEER, and others as appropriate will be held to review for acceptability to ENGINEER as provided below the schedules submitted in accordance with paragraph 2.05.B. CONTRACTOR shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to CONTRACTOR until acceptable schedules are submitted to ENGINEER.

1. The progress schedule will be acceptable to ENGINEER if it provides an orderly progression of the Work to completion within any specified Milestones and the Contract Times. Such acceptance will not impose on ENGINEER responsibility for the progress schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve CONTRACTOR from CONTRACTOR's full responsibility therefor.

2. CONTRACTOR's schedule of Shop Drawing and Sample submittals will be acceptable to ENGINEER if it provides a workable arrangement for reviewing and processing the required submittals.

3. CONTRACTOR's schedule of values will be acceptable to ENGINEER as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to OWNER.

C. Clarifications and interpretations of the Contract Documents shall be issued by ENGINEER as provided in Article 9.

3.02 *Reference Standards*

A. *Standards, Specifications, Codes, Laws, and Regulations*

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids),

except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of OWNER, CONTRACTOR, or ENGINEER, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall any such provision or instruction be effective to assign to OWNER, ENGINEER, or any of ENGINEER's Consultants, agents, or employees any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

1. If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, CONTRACTOR shall report it to ENGINEER in writing at once. CONTRACTOR shall not proceed with the Work affected thereby (except in an emergency as required by paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.04; provided, however, that CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any such conflict, error, ambiguity, or discrepancy unless CONTRACTOR knew or reasonably should have known thereof.

B. *Resolving Discrepancies*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

a. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or

b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Amending and Supplementing Contract Documents*

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways: (i) a Written Amendment; (ii) a Change Order; or (iii) a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways: (i) a Field Order; (ii) ENGINEER's approval of a Shop Drawing or Sample; or (iii) ENGINEER's written interpretation or clarification.

3.05 *Reuse of Documents*

A. CONTRACTOR and any Subcontractor or Supplier or other individual or entity performing or furnishing any of the Work under a direct or indirect contract with OWNER: (i) shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of ENGINEER or ENGINEER's Consultant, including electronic media editions; and (ii) shall not reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of OWNER and ENGINEER and specific written verification or adaption by ENGINEER. This prohibition will survive final payment, completion, and acceptance of the Work, or termination or completion of the Contract. Nothing herein shall preclude CONTRACTOR from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

4.01 *Availability of Lands*

A. OWNER shall furnish the Site. OWNER shall notify CONTRACTOR of any encumbrances or restrictions not of general application but specifically related to use of the Site with which CONTRACTOR must comply in performing the Work. OWNER will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If CONTRACTOR and OWNER are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in OWNER's furnishing the Site, CONTRACTOR may make a Claim therefor as provided in paragraph 10.05.

B. Upon reasonable written request, OWNER shall furnish CONTRACTOR with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and OWNER's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

C. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 *Subsurface and Physical Conditions*

A. *Reports and Drawings:* The Supplementary Conditions identify:

1. those reports of explorations and tests of subsurface conditions at or contiguous to the Site that ENGINEER has used in preparing the Contract Documents; and

2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that ENGINEER has used in preparing the Contract Documents.

B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:* CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any Claim against OWNER, ENGINEER, or any of ENGINEER's Consultants with respect to:

1. the completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If CONTRACTOR believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:

1. is of such a nature as to establish that any "technical data" on which CONTRACTOR is entitled to rely as provided in paragraph 4.02 is materially inaccurate; or

2. is of such a nature as to require a change in the Contract Documents; or

3. differs materially from that shown or indicated in the Contract Documents; or

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A), notify OWNER and ENGINEER in writing about such condition. CONTRACTOR shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. *ENGINEER's Review:* After receipt of written notice as required by paragraph 4.03.A, ENGINEER will promptly review the pertinent condition, determine the necessity of OWNER's obtaining additional exploration or tests with respect thereto, and advise OWNER in writing (with a copy to CONTRACTOR) of ENGINEER's findings and conclusions.

C. *Possible Price and Times Adjustments*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in CONTRACTOR's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. such condition must meet any one or more of the categories described in paragraph 4.03.A; and

- b. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of paragraphs 9.08 and 11.03.

2. CONTRACTOR shall not be entitled to any adjustment in the Contract Price or Contract Times if:

a. CONTRACTOR knew of the existence of such conditions at the time CONTRACTOR made a final commitment to OWNER in respect of Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or

b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for CONTRACTOR prior to CONTRACTOR's making such final commitment; or

c. CONTRACTOR failed to give the written notice within the time and as required by paragraph 4.03.A.

3. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in paragraph 10.05. However, OWNER, ENGINEER, and ENGINEER's Consultants shall not be liable to CONTRACTOR for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by CONTRACTOR on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to OWNER or ENGINEER by the owners of such Underground Facilities, including OWNER, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. OWNER and ENGINEER shall not be responsible for the accuracy or completeness of any such information or data; and

2. the cost of all of the following will be included in the Contract Price, and CONTRACTOR shall have full responsibility for:

a. reviewing and checking all such information and data,

b. locating all Underground Facilities shown or indicated in the Contract Documents,

c. coordination of the Work with the owners of such Underground Facilities, including OWNER, during construction, and

d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to OWNER and ENGINEER. ENGINEER will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility.

2. If ENGINEER concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that CONTRACTOR did not know of and could not reasonably have been expected to be aware of or to have anticipated. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, OWNER or CONTRACTOR may make a Claim therefor as provided in paragraph 10.05.

4.05 *Reference Points*

A. OWNER shall provide engineering surveys to establish reference points for construction which in ENGINEER's judgment are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out the Work, shall protect and preserve the established reference points and property

monuments, and shall make no changes or relocations without the prior written approval of OWNER. CONTRACTOR shall report to ENGINEER whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 Hazardous Environmental Condition at Site

A. *Reports and Drawings:* Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the ENGINEER in the preparation of the Contract Documents.

B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:* CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any Claim against OWNER, ENGINEER or any of ENGINEER's Consultants with respect to:

1. the completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or

3. any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

C. CONTRACTOR shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. CONTRACTOR shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by CONTRACTOR, Subcontractors, Suppliers, or anyone else for whom CONTRACTOR is responsible.

D. If CONTRACTOR encounters a Hazardous Environmental Condition or if CONTRACTOR or anyone for whom CONTRACTOR is responsible creates a Hazardous

Environmental Condition, CONTRACTOR shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by paragraph 6.16); and (iii) notify OWNER and ENGINEER (and promptly thereafter confirm such notice in writing). OWNER shall promptly consult with ENGINEER concerning the necessity for OWNER to retain a qualified expert to evaluate such condition or take corrective action, if any.

E. CONTRACTOR shall not be required to resume Work in connection with such condition or in any affected area until after OWNER has obtained any required permits related thereto and delivered to CONTRACTOR written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If OWNER and CONTRACTOR cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by CONTRACTOR, either party may make a Claim therefor as provided in paragraph 10.05.

F. If after receipt of such written notice CONTRACTOR does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then OWNER may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If OWNER and CONTRACTOR cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in paragraph 10.05. OWNER may have such deleted portion of the Work performed by OWNER's own forces or others in accordance with Article 7.

G. To the fullest extent permitted by Laws and Regulations, OWNER shall indemnify and hold harmless CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by CONTRACTOR or by anyone for whom CONTRACTOR is responsible. Nothing

in this paragraph 4.06.E shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

H. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by CONTRACTOR or by anyone for whom CONTRACTOR is responsible. Nothing in this paragraph 4.06.F shall obligate CONTRACTOR to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

I. The provisions of paragraphs 4.02, 4.03, and 4.04 are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 - BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

A. CONTRACTOR shall furnish performance and payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. CONTRACTOR shall also furnish such other Bonds as are required by the Contract Documents.

B. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

C. If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements

of paragraph 5.01.B, CONTRACTOR shall within 20 days thereafter substitute another Bond and surety, both of which shall comply with the requirements of paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

A. All Bonds and insurance required by the Contract Documents to be purchased and maintained by OWNER or CONTRACTOR shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue Bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 *Certificates of Insurance*

A. CONTRACTOR shall deliver to OWNER, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by OWNER or any other additional insured) which CONTRACTOR is required to purchase and maintain. OWNER shall deliver to CONTRACTOR, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by CONTRACTOR or any other additional insured) which OWNER is required to purchase and maintain.

5.04 *CONTRACTOR's Liability Insurance*

A. CONTRACTOR shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from CONTRACTOR's performance of the Work and CONTRACTOR's other obligations under the Contract Documents, whether it is to be performed by CONTRACTOR, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR's employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than CONTRACTOR's employees;

4. claims for damages insured by reasonably available personal injury liability coverage which are sustained: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (ii) by any other person for any other reason;

5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and

6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance so required by this paragraph 5.04 to be purchased and maintained shall:

1. with respect to insurance required by paragraphs 5.04.A.3 through 5.04.A.6 inclusive, include as additional insureds (subject to any customary exclusion in respect of professional liability) OWNER, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;

3. include completed operations insurance;

4. include contractual liability insurance covering CONTRACTOR's indemnity obligations under paragraphs 6.07, 6.11, and 6.20;

5. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the CONTRACTOR pursuant to paragraph 5.03 will so provide);

6. remain in effect at least until final payment and at all times thereafter when CONTRACTOR may be

correcting, removing, or replacing defective Work in accordance with paragraph 13.07; and

7. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and CONTRACTOR shall furnish OWNER and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to OWNER and any such additional insured of continuation of such insurance at final payment and one year thereafter).

5.05 OWNER's Liability Insurance

A. In addition to the insurance required to be provided by CONTRACTOR under paragraph 5.04, OWNER, at OWNER's option, may purchase and maintain at OWNER's expense OWNER's own liability insurance as will protect OWNER against claims which may arise from operations under the Contract Documents.

5.06 Property Insurance

A. Unless otherwise provided in the Supplementary Conditions, OWNER shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

1. include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an additional insured;

2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, false work, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, and such other perils or causes of loss as may be specifically required by the Supplementary Conditions;

3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by OWNER prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by ENGINEER;

5. allow for partial utilization of the Work by OWNER;

6. include testing and startup; and

7. be maintained in effect until final payment is made unless otherwise agreed to in writing by OWNER, CONTRACTOR, and ENGINEER with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.

B. OWNER shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with paragraph 5.07.

D. OWNER shall not be responsible for purchasing and maintaining any property insurance specified in this paragraph 5.06 to protect the interests of CONTRACTOR, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by CONTRACTOR, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

E. If CONTRACTOR requests in writing that other special insurance be included in the property insurance policies provided under paragraph 5.06, OWNER shall, if possible, include such insurance, and the cost thereof will be charged to CONTRACTOR by appropriate Change Order or Written Amendment. Prior to commencement of the Work

at the Site, OWNER shall in writing advise CONTRACTOR whether or not such other insurance has been procured by OWNER.

5.07 *Waiver of Rights*

A. OWNER and CONTRACTOR intend that all policies purchased in accordance with paragraph 5.06 will protect OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. OWNER and CONTRACTOR waive all rights against each other and their respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by OWNER as trustee or otherwise payable under any policy so issued.

B. OWNER waives all rights against CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for:

1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to OWNER's property or the Work caused by, arising out of, or resulting from fire or other peril whether or not insured by OWNER; and

2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by OWNER during partial utilization pursuant to paragraph 14.05, after Substantial Completion

pursuant to paragraph 14.04, or after final payment pursuant to paragraph 14.07.

C. Any insurance policy maintained by OWNER covering any loss, damage or consequential loss referred to in paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against CONTRACTOR, Subcontractors, ENGINEER, or ENGINEER's Consultants and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them.

5.08 *Receipt and Application of Insurance Proceeds*

A. Any insured loss under the policies of insurance required by paragraph 5.06 will be adjusted with OWNER and made payable to OWNER as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of paragraph 5.08.B. OWNER shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment.

B. OWNER as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to OWNER's exercise of this power. If such objection be made, OWNER as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, OWNER as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, OWNER as fiduciary shall give bond for the proper performance of such duties.

5.09 *Acceptance of Bonds and Insurance; Option to Replace*

A. If either OWNER or CONTRACTOR has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by paragraph 2.05.C. OWNER and CONTRACTOR shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the Bonds and insurance required

of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent Bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

A. If OWNER finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

A. CONTRACTOR shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction, but CONTRACTOR shall not be responsible for the negligence of OWNER or ENGINEER in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents. CONTRACTOR shall be responsible to see that the completed Work complies accurately with the Contract Documents.

B. At all times during the progress of the Work, CONTRACTOR shall assign a competent resident superintendent thereto who shall not be replaced without written notice to OWNER and ENGINEER except under extraordinary circumstances. The superintendent will be CONTRACTOR's representative at the Site and shall have authority to act on behalf of CONTRACTOR. All communications given to or received from the superintendent shall be binding on CONTRACTOR.

6.02 Labor; Working Hours

A. CONTRACTOR shall provide competent, suitably qualified personnel to survey, lay out, and construct the Work as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday, or any legal holiday without OWNER's written consent (which will not be unreasonably withheld) given after prior written notice to ENGINEER.

6.03 Services, Materials, and Equipment

A. Unless otherwise specified in the General Requirements, CONTRACTOR shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of OWNER. If required by ENGINEER, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 Progress Schedule

A. CONTRACTOR shall adhere to the progress schedule established in accordance with paragraph 2.07 as it may be adjusted from time to time as provided below.

1. CONTRACTOR shall submit to ENGINEER for acceptance (to the extent indicated in paragraph 2.07) proposed adjustments in the progress schedule that will not result in changing the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with

any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of Article 12. Such adjustments may only be made by a Change Order or Written Amendment in accordance with Article 12.

6.05 Substitutes and "Or-Equals"

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to ENGINEER for review under the circumstances described below.

1. "Or-Equal" Items: If in ENGINEER's sole discretion an item of material or equipment proposed by CONTRACTOR is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by ENGINEER as an "or-equal" item, in which case review and approval of the proposed item may, in ENGINEER's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment ENGINEER determines that: (i) it is at least equal in quality, durability, appearance, strength, and design characteristics; (ii) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole, and;

b. CONTRACTOR certifies that: (i) there is no increase in cost to the OWNER; and (ii) it will conform substantially, even with deviations, to the detailed requirements of the item named in the Contract Documents.

2. Substitute Items

a. If in ENGINEER's sole discretion an item of material or equipment proposed by CONTRACTOR does not qualify as an "or-equal" item under

paragraph 6.05.A.1, it will be considered a proposed substitute item.

b. CONTRACTOR shall submit sufficient information as provided below to allow ENGINEER to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by ENGINEER from anyone other than CONTRACTOR.

c. The procedure for review by ENGINEER will be as set forth in paragraph 6.05.A.2.d, as supplemented in the General Requirements and as ENGINEER may decide is appropriate under the circumstances.

d. CONTRACTOR shall first make written application to ENGINEER for review of a proposed substitute item of material or equipment that CONTRACTOR seeks to furnish or use. The application shall certify that the proposed substitute item will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified, and be suited to the same use as that specified. The application will state the extent, if any, to which the use of the proposed substitute item will prejudice CONTRACTOR's achievement of Substantial Completion on time, whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) to adapt the design to the proposed substitute item and whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute item from that specified will be identified in the application, and available engineering, sales, maintenance, repair, and replacement services will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change, all of which will be considered by ENGINEER in evaluating the proposed substitute item. ENGINEER may require CONTRACTOR to furnish additional data about the proposed substitute item.

B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is shown or indicated in and expressly

required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by ENGINEER. CONTRACTOR shall submit sufficient information to allow ENGINEER, in ENGINEER's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by ENGINEER will be similar to that provided in subparagraph 6.05.A.2.

C. *Engineer's Evaluation:* ENGINEER will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to paragraphs 6.05.A and 6.05.B. ENGINEER will be the sole judge of acceptability. No "or-equal" or substitute will be ordered, installed or utilized until ENGINEER's review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an "or equal." ENGINEER will advise CONTRACTOR in writing of any negative determination.

D. *Special Guarantee:* OWNER may require CONTRACTOR to furnish at CONTRACTOR's expense a special performance guarantee or other surety with respect to any substitute.

E. *ENGINEER's Cost Reimbursement:* ENGINEER will record time required by ENGINEER and ENGINEER's Consultants in evaluating substitute proposed or submitted by CONTRACTOR pursuant to paragraphs 6.05.A.2 and 6.05.B and in making changes in the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) occasioned thereby. Whether or not ENGINEER approves a substitute item so proposed or submitted by CONTRACTOR, CONTRACTOR shall reimburse OWNER for the charges of ENGINEER and ENGINEER's Consultants for evaluating each such proposed substitute.

F. *CONTRACTOR's Expense:* CONTRACTOR shall provide all data in support of any proposed substitute or "or-equal" at CONTRACTOR's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

A. CONTRACTOR shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to OWNER as indicated in paragraph 6.06.B), whether initially or as a replacement, against whom OWNER may have reasonable objection. CONTRACTOR shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.

B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or

entities to be submitted to OWNER in advance for acceptance by OWNER by a specified date prior to the Effective Date of the Agreement, and if CONTRACTOR has submitted a list thereof in accordance with the Supplementary Conditions, OWNER's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. CONTRACTOR shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued or Written Amendment signed. No acceptance by OWNER of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of OWNER or ENGINEER to reject defective Work.

C. CONTRACTOR shall be fully responsible to OWNER and ENGINEER for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between OWNER or ENGINEER and any such Subcontractor, Supplier or other individual or entity, nor shall it create any obligation on the part of OWNER or ENGINEER to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

D. CONTRACTOR shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR.

E. CONTRACTOR shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with ENGINEER through CONTRACTOR.

F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

G. All Work performed for CONTRACTOR by a Subcontractor or Supplier will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor

or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and ENGINEER. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in paragraph 5.06, the agreement between the CONTRACTOR and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against OWNER, CONTRACTOR, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, CONTRACTOR will obtain the same.

6.07 *Patent Fees and Royalties*

A. CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of OWNER or ENGINEER its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by OWNER in the Contract Documents. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees or agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 *Permits*

A. Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall obtain and pay for all construction permits and licenses. OWNER shall assist CONTRACTOR, when necessary, in obtaining such permits

and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. CONTRACTOR shall pay all charges of utility owners for connections to the Work, and OWNER shall pay all charges of such utility owners for capital costs related thereto, such as plant investment fees.

6.09 *Laws and Regulations*

A. CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither OWNER nor ENGINEER shall be responsible for monitoring CONTRACTOR's compliance with any Laws or Regulations.

B. If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, CONTRACTOR shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work; however, it shall not be CONTRACTOR's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve CONTRACTOR of CONTRACTOR's obligations under paragraph 3.03.

C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Times. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in paragraph 10.05.

6.10 *Taxes*

A. CONTRACTOR shall pay all sales, consumer, use, and other similar taxes required to be paid by CONTRACTOR in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

6.11 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas*

1. CONTRACTOR shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not

unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultant, and the officers, directors, partners, employees, agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against OWNER, ENGINEER, or any other party indemnified hereunder to the extent caused by or based upon CONTRACTOR's performance of the Work.

B. *Removal of Debris During Performance of the Work:* During the progress of the Work CONTRACTOR shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. *Cleaning:* Prior to Substantial Completion of the Work CONTRACTOR shall clean the Site and make it ready for utilization by OWNER. At the completion of the Work CONTRACTOR shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. *Loading Structures:* CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.12 *Record Documents*

A. CONTRACTOR shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work

Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to ENGINEER for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to ENGINEER for OWNER.

6.13 *Safety and Protection*

A. CONTRACTOR shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. all persons on the Site or who may be affected by the Work;
2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. CONTRACTOR shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All damage, injury, or loss to any property referred to in paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of OWNER or ENGINEER or ENGINEER's Consultant, or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them). CONTRACTOR's duties and

responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and ENGINEER has issued a notice to OWNER and CONTRACTOR in accordance with paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

A. CONTRACTOR shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.15 *Hazard Communication Programs*

A. CONTRACTOR shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.16 *Emergencies*

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, CONTRACTOR is obligated to act to prevent threatened damage, injury, or loss. CONTRACTOR shall give ENGINEER prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If ENGINEER determines that a change in the Contract Documents is required because of the action taken by CONTRACTOR in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 *Shop Drawings and Samples*

A. CONTRACTOR shall submit Shop Drawings to ENGINEER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. All submittals will be identified as ENGINEER may require and in the number of copies specified in the General Requirements. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show ENGINEER the services, materials, and equipment CONTRACTOR proposes to provide and to enable ENGINEER to review the information for the limited purposes required by paragraph 6.17.E.

B. CONTRACTOR shall also submit Samples to ENGINEER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample

submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers, and the use for which intended and otherwise as ENGINEER may require to enable ENGINEER to review the submittal for the limited purposes required by paragraph 6.17.E. The numbers of each Sample to be submitted will be as specified in the Specifications.

C. Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submittals acceptable to ENGINEER as required by paragraph 2.07, any related Work performed prior to ENGINEER's review and approval of the pertinent submittal will be at the sole expense and responsibility of CONTRACTOR.

D. Submittal Procedures

1. Before submitting each Shop Drawing or Sample, CONTRACTOR shall have determined and verified:

a. all field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

b. all materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;

c. all information relative to means, methods, techniques, sequences, and procedures of construction and safety precautions and programs incident thereto; and

d. CONTRACTOR shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.

2. Each submittal shall bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR's obligations under the Contract Documents with respect to CONTRACTOR's review and approval of that submittal.

3. At the time of each submittal, CONTRACTOR shall give ENGINEER specific written notice of such variations, if any, that the Shop Drawing or Sample submitted may have from the requirements of the Contract Documents, such notice to be in a written communication separate from the submittal; and, in addition, shall cause a specific notation to be made on each Shop

Drawing and Sample submitted to ENGINEER for review and approval of each such variation.

E. ENGINEER's Review

1. ENGINEER will timely review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals acceptable to ENGINEER. ENGINEER's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. ENGINEER's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. ENGINEER's review and approval of Shop Drawings or Samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called ENGINEER's attention to each such variation at the time of each submittal as required by paragraph 6.17.D.3 and ENGINEER has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval; nor will any approval by ENGINEER relieve CONTRACTOR from responsibility for complying with the requirements of paragraph 6.17.D.1.

F. Resubmittal Procedures

1. CONTRACTOR shall make corrections required by ENGINEER and shall return the required number of corrected copies of Shop Drawings and submit as required new Samples for review and approval. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by ENGINEER on previous submittals.

6.18 Continuing the Work

A. CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except

as permitted by paragraph 15.04 or as OWNER and CONTRACTOR may otherwise agree in writing.

6.19 *CONTRACTOR's General Warranty and Guarantee*

A. CONTRACTOR warrants and guarantees to OWNER, ENGINEER, and ENGINEER's Consultants that all Work will be in accordance with the Contract Documents and will not be defective. CONTRACTOR's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than CONTRACTOR, Subcontractors, Suppliers, or any other individual or entity for whom CONTRACTOR is responsible; or
2. normal wear and tear under normal usage.

B. CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents:

1. observations by ENGINEER;
2. recommendation by ENGINEER or payment by OWNER of any progress or final payment;
3. the issuance of a certificate of Substantial Completion by ENGINEER or any payment related thereto by OWNER;
4. use or occupancy of the Work or any part thereof by OWNER;
5. any acceptance by OWNER or any failure to do so;
6. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by ENGINEER;
7. any inspection, test, or approval by others; or
8. any correction of defective Work by OWNER.

6.20 *Indemnification*

A. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them from

and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage:

1. is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom; and
2. is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of an individual or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such individual or entity.

B. In any and all claims against OWNER or ENGINEER or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CONTRACTOR or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

C. The indemnification obligations of CONTRACTOR under paragraph 6.20.A shall not extend to the liability of ENGINEER and ENGINEER's Consultants or to the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them arising out of:

1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

ARTICLE 7 - OTHER WORK

7.01 *Related Work at Site*

A. OWNER may perform other work related to the Project at the Site by OWNER's employees, or let other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to CONTRACTOR prior to starting any such other work; and

2. if OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in paragraph 10.05.

B. CONTRACTOR shall afford each other contractor who is a party to such a direct contract and each utility owner (and OWNER, if OWNER is performing the other work with OWNER's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, CONTRACTOR shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of ENGINEER and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between OWNER and such utility owners and other contractors.

C. If the proper execution or results of any part of CONTRACTOR's Work depends upon work performed by others under this Article 7, CONTRACTOR shall inspect such other work and promptly report to ENGINEER in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of CONTRACTOR's Work. CONTRACTOR's failure to so report will constitute an acceptance of such other work as fit and proper for integration with CONTRACTOR's Work except for latent defects and deficiencies in such other work.

7.02 *Coordination*

A. If OWNER intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;

2. the specific matters to be covered by such authority and responsibility will be itemized; and

3. the extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, OWNER shall have sole authority and responsibility for such coordination.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

A. Except as otherwise provided in these General Conditions, OWNER shall issue all communications to CONTRACTOR through ENGINEER.

8.02 *Replacement of ENGINEER*

A. In case of termination of the employment of ENGINEER, OWNER shall appoint an engineer to whom CONTRACTOR makes no reasonable objection, whose status under the Contract Documents shall be that of the former ENGINEER.

8.03 *Furnish Data*

A. OWNER shall promptly furnish the data required of OWNER under the Contract Documents.

8.04 *Pay Promptly When Due*

A. OWNER shall make payments to CONTRACTOR promptly when they are due as provided in paragraphs 14.02.C and 14.07.C.

8.05 *Lands and Easements; Reports and Tests*

A. OWNER's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.01 and 4.05. Paragraph 4.02 refers to OWNER's identifying and making available to CONTRACTOR copies of reports of explorations

and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by ENGINEER in preparing the Contract Documents.

8.06 *Insurance*

A. OWNER's responsibilities, if any, in respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

8.07 *Change Orders*

A. OWNER is obligated to execute Change Orders as indicated in paragraph 10.03.

8.08 *Inspections, Tests, and Approvals*

A. OWNER's responsibility in respect to certain inspections, tests, and approvals is set forth in paragraph 13.03.B.

8.09 *Limitations on OWNER's Responsibilities*

A. The OWNER shall not supervise, direct, or have control or authority over, nor be responsible for, CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work. OWNER will not be responsible for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

8.10 *Undisclosed Hazardous Environmental Condition*

A. OWNER's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in paragraph 4.06.

8.11 *Evidence of Financial Arrangements*

A. If and to the extent OWNER has agreed to furnish CONTRACTOR reasonable evidence that financial arrangements have been made to satisfy OWNER's obligations under the Contract Documents, OWNER's responsibility in respect thereof will be as set forth in the Supplementary Conditions.

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *OWNER'S Representative*

A. ENGINEER will be OWNER's representative during the construction period. The duties and responsibilities and the limitations of authority of ENGINEER as OWNER's representative during construction are set forth in the Contract Documents and will not be changed without written consent of OWNER and ENGINEER.

9.02 *Visits to Site*

A. ENGINEER will make visits to the Site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of CONTRACTOR's executed Work. Based on information obtained during such visits and observations, ENGINEER, for the benefit of OWNER, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. ENGINEER will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. ENGINEER's efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, ENGINEER will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defective Work.

B. ENGINEER's visits and observations are subject to all the limitations on ENGINEER's authority and responsibility set forth in paragraph 9.10, and particularly, but without limitation, during or as a result of ENGINEER's visits or observations of CONTRACTOR's Work ENGINEER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Project Representative*

A. If OWNER and ENGINEER agree, ENGINEER will furnish a Resident Project Representative to assist ENGINEER in providing more extensive observation of the Work. The responsibilities and authority and limitations thereon of any such Resident Project Representative and assistants will be as provided in paragraph 9.10 and in the Supplementary Conditions. If OWNER designates another

representative or agent to represent OWNER at the Site who is not ENGINEER's Consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.04 *Clarifications and Interpretations*

A. ENGINEER will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents as ENGINEER may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. Such written clarifications and interpretations will be binding on OWNER and CONTRACTOR. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a written clarification or interpretation, a Claim may be made therefor as provided in paragraph 10.05.

9.05 *Authorized Variations in Work*

A. ENGINEER may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on OWNER and also on CONTRACTOR, who shall perform the Work involved promptly. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of a Field Order, a Claim may be made therefor as provided in paragraph 10.05.

9.06 *Rejecting Defective Work*

A. ENGINEER will have authority to disapprove or reject Work which ENGINEER believes to be defective, or that ENGINEER believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. ENGINEER will also have authority to require special inspection or testing of the Work as provided in paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.07 *Shop Drawings, Change Orders and Payments*

A. In connection with ENGINEER's authority as to Shop Drawings and Samples, see paragraph 6.17.

B. In connection with ENGINEER's authority as to Change Orders, see Articles 10, 11, and 12.

C. In connection with ENGINEER's authority as to Applications for Payment, see Article 14.

9.08 *Determinations for Unit Price Work*

A. ENGINEER will determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR. ENGINEER will review with CONTRACTOR the ENGINEER's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). ENGINEER's written decision thereon will be final and binding (except as modified by ENGINEER to reflect changed factual conditions or more accurate data) upon OWNER and CONTRACTOR, subject to the provisions of paragraph 10.05.

9.09 *Decisions on Requirements of Contract Documents and Acceptability of Work*

A. ENGINEER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work, the quantities and classifications of Unit Price Work, the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, and Claims seeking changes in the Contract Price or Contract Times will be referred initially to ENGINEER in writing, in accordance with the provisions of paragraph 10.05, with a request for a formal decision.

B. When functioning as interpreter and judge under this paragraph 9.09, ENGINEER will not show partiality to OWNER or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by ENGINEER pursuant to this paragraph 9.09 with respect to any such Claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.07) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter.

9.10 *Limitations on ENGINEER's Authority and Responsibilities*

A. Neither ENGINEER's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by ENGINEER in good faith either to exercise or not exercise such authority

or responsibility or the undertaking, exercise, or performance of any authority or responsibility by ENGINEER shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by ENGINEER to CONTRACTOR, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. ENGINEER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work. ENGINEER will not be responsible for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

C. ENGINEER will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. ENGINEER's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.

E. The limitations upon authority and responsibility set forth in this paragraph 9.10 shall also apply to ENGINEER's Consultants, Resident Project Representative, and assistants.

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

A. Without invalidating the Agreement and without notice to any surety, OWNER may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Written Amendment, a Change Order, or a Work Change Directive. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

B. If OWNER and CONTRACTOR are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change

Directive, a Claim may be made therefor as provided in paragraph 10.05.

10.02 *Unauthorized Changes in the Work*

A. CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in paragraph 3.04, except in the case of an emergency as provided in paragraph 6.16 or in the case of uncovering Work as provided in paragraph 13.04.B.

10.03 *Execution of Change Orders*

A. OWNER and CONTRACTOR shall execute appropriate Change Orders recommended by ENGINEER (or Written Amendments) covering:

1. changes in the Work which are: (i) ordered by OWNER pursuant to paragraph 10.01.A, (ii) required because of acceptance of defective Work under paragraph 13.08.A or OWNER's correction of defective Work under paragraph 13.09, or (iii) agreed to by the parties;

2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by ENGINEER pursuant to paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in paragraph 6.18.A.

10.04 *Notification to Surety*

A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be CONTRACTOR's responsibility. The amount of each applicable Bond will be adjusted to reflect the effect of any such change.

10.05 *Claims and Disputes*

A. *Notice:* Written notice stating the general nature of each Claim, dispute, or other matter shall be delivered by the claimant to ENGINEER and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. Notice of the amount or extent of the Claim, dispute, or other matter with supporting data shall be delivered to the ENGINEER and the other party to the Contract within 60 days after the start of such event (unless ENGINEER allows additional time for claimant to submit additional or more accurate data in support of such Claim, dispute, or other matter). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of paragraph 12.01.B. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to ENGINEER and the claimant within 30 days after receipt of the claimant's last submittal (unless ENGINEER allows additional time).

B. *ENGINEER's Decision:* ENGINEER will render a formal decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any. ENGINEER's written decision on such Claim, dispute, or other matter will be final and binding upon OWNER and CONTRACTOR unless:

1. an appeal from ENGINEER's decision is taken within the time limits and in accordance with the dispute resolution procedures set forth in Article 16; or

2. if no such dispute resolution procedures have been set forth in Article 16, a written notice of intention to appeal from ENGINEER's written decision is delivered by OWNER or CONTRACTOR to the other and to ENGINEER within 30 days after the date of such decision, and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction within 60 days after the date of such decision or within 60 days after Substantial Completion, whichever is later (unless otherwise agreed in writing by OWNER and CONTRACTOR), to exercise such rights or remedies as the appealing party may have with respect to such Claim, dispute, or other matter in accordance with applicable Laws and Regulations.

C. If ENGINEER does not render a formal decision in writing within the time stated in paragraph 10.05.B, a decision denying the Claim in its entirety shall be deemed to have been issued 31 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.

D. No Claim for an adjustment in Contract Price or Contract Times (or Milestones) will be valid if not submitted in accordance with this paragraph 10.05.

ARTICLE 11 - COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK

11.01 *Cost of the Work*

A. *Costs Included:* The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to CONTRACTOR will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by OWNER, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in paragraph 11.01.B.

1. Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by OWNER and CONTRACTOR. Such employees shall include without limitation superintendents, foremen, and other personnel employed full time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by OWNER.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless OWNER deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to OWNER. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to OWNER, and CONTRACTOR shall make provisions so that they may be obtained.

3. Payments made by CONTRACTOR to Subcontractors for Work performed by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from subcontractors acceptable to OWNER and CONTRACTOR and shall deliver such bids to OWNER, who will then determine, with the advice of ENGINEER, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as CONTRACTOR's Cost of the Work and fee as provided in this paragraph 11.01.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.

5. Supplemental costs including the following:

a. The proportion of necessary transportation, travel, and subsistence expenses of CONTRACTOR's employees incurred in discharge of duties connected with the Work.

b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of CONTRACTOR.

c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of ENGINEER, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by Laws and Regulations.

e. Deposits lost for causes other than negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable,

and royalty payments and fees for permits and licenses.

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR's fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expressage, and similar petty cash items in connection with the Work.

i. When the Cost of the Work is used to determine the value of a Change Order or of a Claim, the cost of premiums for additional Bonds and insurance required because of the changes in the Work or caused by the event giving rise to the Claim.

j. When all the Work is performed on the basis of cost-plus, the costs of premiums for all Bonds and insurance CONTRACTOR is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnerships and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by CONTRACTOR, whether at the Site or in CONTRACTOR's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.01.A.1 or specifically covered by paragraph 11.01.A.4, all of which are to be

considered administrative costs covered by the CONTRACTOR's fee.

2. Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR's office at the Site.

3. Any part of CONTRACTOR's capital expenses, including interest on CONTRACTOR's capital employed for the Work and charges against CONTRACTOR for delinquent payments.

4. Costs due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraphs 11.01.A and 11.01.B.

C. *CONTRACTOR's Fee:* When all the Work is performed on the basis of cost-plus, CONTRACTOR's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, CONTRACTOR's fee shall be determined as set forth in paragraph 12.01.C.

D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to paragraphs 11.01.A and 11.01.B, CONTRACTOR will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to ENGINEER an itemized cost breakdown together with supporting data.

11.02 *Cash Allowances*

A. It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums as may be acceptable to OWNER and ENGINEER. CONTRACTOR agrees that:

1. the allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

2. CONTRACTOR's costs for unloading and handling on the Site, labor, installation costs, overhead, profit, and other expenses contemplated for the allow-

ances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

B. Prior to final payment, an appropriate Change Order will be issued as recommended by ENGINEER to reflect actual amounts due CONTRACTOR on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 *Unit Price Work*

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by ENGINEER subject to the provisions of paragraph 9.08.

B. Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR's overhead and profit for each separately identified item.

C. OWNER or CONTRACTOR may make a Claim for an adjustment in the Contract Price in accordance with paragraph 10.05 if:

1. the quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

2. there is no corresponding adjustment with respect any other item of Work; and

3. if CONTRACTOR believes that CONTRACTOR is entitled to an increase in Contract Price as a result of having incurred additional expense or OWNER believes that OWNER is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 *Change of Contract Price*

A. The Contract Price may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the ENGINEER and the other party to the Contract in accordance with the provisions of paragraph 10.05.

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraph 11.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 12.01.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in paragraph 11.01) plus a CONTRACTOR's fee for overhead and profit (determined as provided in paragraph 12.01.C).

C. *CONTRACTOR's Fee:* The CONTRACTOR's fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or

2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

a. for costs incurred under paragraphs 11.01.A.1 and 11.01.A.2, the CONTRACTOR's fee shall be 15 percent;

b. for costs incurred under paragraph 11.01.A.3, the CONTRACTOR's fee shall be five percent;

c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no

fixed fee is agreed upon, the intent of paragraph 12.01.C.2.a is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and CONTRACTOR will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

d. no fee shall be payable on the basis of costs itemized under paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

e. the amount of credit to be allowed by CONTRACTOR to OWNER for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in CONTRACTOR's fee by an amount equal to five percent of such net decrease; and

f. when both additions and credits are involved in any one change, the adjustment in CONTRACTOR's fee shall be computed on the basis of the net change in accordance with paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

A. The Contract Times (or Milestones) may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Times (or Milestones) shall be based on written notice submitted by the party making the claim to the ENGINEER and the other party to the Contract in accordance with the provisions of paragraph 10.05.

B. Any adjustment of the Contract Times (or Milestones) covered by a Change Order or of any Claim for an adjustment in the Contract Times (or Milestones) will be determined in accordance with the provisions of this Article 12.

12.03 *Delays Beyond CONTRACTOR's Control*

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of CONTRACTOR, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in paragraph 12.02.A. Delays beyond the control of CONTRACTOR shall include, but not be limited to, acts or neglect by OWNER, acts or neglect of utility owners or other contractors performing other work as contemplated by

Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

12.04 *Delays Within CONTRACTOR's Control*

A. The Contract Times (or Milestones) will not be extended due to delays within the control of CONTRACTOR. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of CONTRACTOR.

12.05 *Delays Beyond OWNER's and CONTRACTOR's Control*

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both OWNER and CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay.

12.06 *Delay Damages*

A. In no event shall OWNER or ENGINEER be liable to CONTRACTOR, any Subcontractor, any Supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from:

1. delays caused by or within the control of CONTRACTOR; or

2. delays beyond the control of both OWNER and CONTRACTOR including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God, or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 7.

B. Nothing in this paragraph 12.06 bars a change in Contract Price pursuant to this Article 12 to compensate CONTRACTOR due to delay, interference, or disruption directly attributable to actions or inactions of OWNER or anyone for whom OWNER is responsible.

ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 *Notice of Defects*

A. Prompt notice of all defective Work of which OWNER or ENGINEER has actual knowledge will be given

to CONTRACTOR. All defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 *Access to Work*

A. OWNER, ENGINEER, ENGINEER's Consultants, other representatives and personnel of OWNER, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspecting, and testing. CONTRACTOR shall provide them proper and safe conditions for such access and advise them of CONTRACTOR's Site safety procedures and programs so that they may comply therewith as applicable.

13.03 *Tests and Inspections*

A. CONTRACTOR shall give ENGINEER timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. OWNER shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. for inspections, tests, or approvals covered by paragraphs 13.03.C and 13.03.D below;

2. that costs incurred in connection with tests or inspections conducted pursuant to paragraph 13.04.B shall be paid as provided in said paragraph 13.04.B; and

3. as otherwise specifically provided in the Contract Documents.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, CONTRACTOR shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish ENGINEER the required certificates of inspection or approval.

D. CONTRACTOR shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for OWNER's and ENGINEER's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to OWNER and ENGINEER.

E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by CONTRACTOR without written concurrence of ENGINEER, it must, if requested by ENGINEER, be uncovered for observation.

F. Uncovering Work as provided in paragraph 13.03.E shall be at CONTRACTOR's expense unless CONTRACTOR has given ENGINEER timely notice of CONTRACTOR's intention to cover the same and ENGINEER has not acted with reasonable promptness in response to such notice.

13.04 *Uncovering Work*

A. If any Work is covered contrary to the written request of ENGINEER, it must, if requested by ENGINEER, be uncovered for ENGINEER's observation and replaced at CONTRACTOR's expense.

B. If ENGINEER considers it necessary or advisable that covered Work be observed by ENGINEER or inspected or tested by others, CONTRACTOR, at ENGINEER's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as ENGINEER may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such Work is defective, CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and OWNER shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, OWNER may make a Claim therefor as provided in paragraph 10.05. If, however, such Work is not found to be defective, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a Claim therefor as provided in paragraph 10.05.

13.05 *OWNER May Stop the Work*

A. If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, OWNER may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of OWNER to stop

the Work shall not give rise to any duty on the part of OWNER to exercise this right for the benefit of CONTRACTOR, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

13.06 *Correction or Removal of Defective Work*

A. CONTRACTOR shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by ENGINEER, remove it from the Project and replace it with Work that is not defective. CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

13.07 *Correction Period*

A. If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for CONTRACTOR's use by OWNER or permitted by Laws and Regulations as contemplated in paragraph 6.11.A is found to be defective, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instructions: (i) repair such defective land or areas, or (ii) correct such defective Work or, if the defective Work has been rejected by OWNER, remove it from the Project and replace it with Work that is not defective, and (iii) satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, OWNER may have the defective Work corrected or repaired or may have the rejected Work removed and replaced, and all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by CONTRACTOR.

B. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that

item may start to run from an earlier date if so provided in the Specifications or by Written Amendment.

C. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

D. CONTRACTOR's obligations under this paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

A. If, instead of requiring correction or removal and replacement of defective Work, OWNER (and, prior to ENGINEER's recommendation of final payment, ENGINEER) prefers to accept it, OWNER may do so. CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to OWNER's evaluation of and determination to accept such defective Work (such costs to be approved by ENGINEER as to reasonableness) and the diminished value of the Work to the extent not otherwise paid by CONTRACTOR pursuant to this sentence. If any such acceptance occurs prior to ENGINEER's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and OWNER shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, OWNER may make a Claim therefor as provided in paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to OWNER.

13.09 *OWNER May Correct Defective Work*

A. If CONTRACTOR fails within a reasonable time after written notice from ENGINEER to correct defective Work or to remove and replace rejected Work as required by ENGINEER in accordance with paragraph 13.06.A, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, OWNER may, after seven days written notice to CONTRACTOR, correct and remedy any such deficiency.

B. In exercising the rights and remedies under this paragraph, OWNER shall proceed expeditiously. In

connection with such corrective and remedial action, OWNER may exclude CONTRACTOR from all or part of the Site, take possession of all or part of the Work and suspend CONTRACTOR's services related thereto; take possession of CONTRACTOR's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which OWNER has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow OWNER, OWNER's representatives, agents and employees, OWNER's other contractors, and ENGINEER and ENGINEER's Consultants access to the Site to enable OWNER to exercise the rights and remedies under this paragraph.

C. All Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by OWNER in exercising the rights and remedies under this paragraph 13.09 will be charged against CONTRACTOR, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, OWNER may make a Claim therefor as provided in paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of CONTRACTOR's defective Work.

D. CONTRACTOR shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by OWNER of OWNER's rights and remedies under this paragraph 13.09.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

A. The schedule of values established as provided in paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to ENGINEER. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 Progress Payments

A. Applications for Payments

1. At least 20 days before the date established for each progress payment (but not more often than once a month), CONTRACTOR shall submit to ENGINEER for review an Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that OWNER has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect OWNER's interest therein, all of which must be satisfactory to OWNER.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of CONTRACTOR stating that all previous progress payments received on account of the Work have been applied on account to discharge CONTRACTOR's legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. Review of Applications

1. ENGINEER will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to OWNER or return the Application to CONTRACTOR indicating in writing ENGINEER's reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application.

2. ENGINEER's recommendation of any payment requested in an Application for Payment will constitute a representation by ENGINEER to OWNER, based on ENGINEER's observations on the Site of the executed Work as an experienced and qualified design professional and on ENGINEER's review of the Application for Payment and the accompanying data and schedules, that to the best of ENGINEER's knowledge, information and belief:

a. the Work has progressed to the point indicated;

b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.08, and to any other qualifications stated in the recommendation); and

c. the conditions precedent to CONTRACTOR's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe the Work.

3. By recommending any such payment ENGINEER will not thereby be deemed to have represented that: (i) inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to ENGINEER in the Contract Documents; or (ii) that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by OWNER or entitle OWNER to withhold payment to CONTRACTOR.

4. Neither ENGINEER's review of CONTRACTOR's Work for the purposes of recommending payments nor ENGINEER's recommendation of any payment, including final payment, will impose responsibility on ENGINEER to supervise, direct, or control the Work or for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for CONTRACTOR's failure to comply with Laws and Regulations applicable to CONTRACTOR's performance of the Work. Additionally, said review or recommendation will not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes CONTRACTOR has used the moneys paid on account of the Contract Price, or to determine that title to any of the Work, materials, or equipment has passed to OWNER free and clear of any Liens.

5. ENGINEER may refuse to recommend the whole or any part of any payment if, in ENGINEER's opinion, it would be incorrect to make the representations to OWNER referred to in paragraph 14.02.B.2. ENGINEER may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests,

revise or revoke any such payment recommendation previously made, to such extent as may be necessary in ENGINEER's opinion to protect OWNER from loss because:

- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
- b. the Contract Price has been reduced by Written Amendment or Change Orders;
- c. OWNER has been required to correct defective Work or complete Work in accordance with paragraph 13.09; or
- d. ENGINEER has actual knowledge of the occurrence of any of the events enumerated in paragraph 15.02.A.

C. *Payment Becomes Due*

1. Ten days after presentation of the Application for Payment to OWNER with ENGINEER's recommendation, the amount recommended will (subject to the provisions of paragraph 14.02.D) become due, and when due will be paid by OWNER to CONTRACTOR.

D. *Reduction in Payment*

1. OWNER may refuse to make payment of the full amount recommended by ENGINEER because:

- a. claims have been made against OWNER on account of CONTRACTOR's performance or furnishing of the Work;
- b. Liens have been filed in connection with the Work, except where CONTRACTOR has delivered a specific Bond satisfactory to OWNER to secure the satisfaction and discharge of such Liens;
- c. there are other items entitling OWNER to a set-off against the amount recommended; or
- d. OWNER has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.02.B.5.a through 14.02.B.5.c or paragraph 15.02.A.

2. If OWNER refuses to make payment of the full amount recommended by ENGINEER, OWNER must give CONTRACTOR immediate written notice (with a copy to ENGINEER) stating the reasons for such action and promptly pay CONTRACTOR any amount remaining after deduction of the amount so withheld.

OWNER shall promptly pay CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by OWNER and CONTRACTOR, when CONTRACTOR corrects to OWNER's satisfaction the reasons for such action.

3. If it is subsequently determined that OWNER's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by paragraph 14.02.C.1.

14.03 *CONTRACTOR's Warranty of Title*

A. CONTRACTOR warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to OWNER no later than the time of payment free and clear of all Liens.

14.04 *Substantial Completion*

A. When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify OWNER and ENGINEER in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that ENGINEER issue a certificate of Substantial Completion. Promptly thereafter, OWNER, CONTRACTOR, and ENGINEER shall make an inspection of the Work to determine the status of completion. If ENGINEER does not consider the Work substantially complete, ENGINEER will notify CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers the Work substantially complete, ENGINEER will prepare and deliver to OWNER a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. OWNER shall have seven days after receipt of the tentative certificate during which to make written objection to ENGINEER as to any provisions of the certificate or attached list. If, after considering such objections, ENGINEER concludes that the Work is not substantially complete, ENGINEER will within 14 days after submission of the tentative certificate to OWNER notify CONTRACTOR in writing, stating the reasons therefor. If, after consideration of OWNER's objections, ENGINEER considers the Work substantially complete, ENGINEER will within said 14 days execute and deliver to OWNER and CONTRACTOR a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as ENGINEER believes justified after consideration of any objections from OWNER. At the time of delivery of the tentative certificate of Substantial Completion ENGINEER will deliver to OWNER and CONTRACTOR a written recommendation as to division of responsibility.

ties pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless OWNER and CONTRACTOR agree otherwise in writing and so inform ENGINEER in writing prior to ENGINEER's issuing the definitive certificate of Substantial Completion, ENGINEER's aforesaid recommendation will be binding on OWNER and CONTRACTOR until final payment.

B. OWNER shall have the right to exclude CONTRACTOR from the Site after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

14.05 *Partial Utilization*

A. Use by OWNER at OWNER's option of any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which OWNER, ENGINEER, and CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by OWNER for its intended purpose without significant interference with CONTRACTOR's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following conditions.

1. OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees that such part of the Work is substantially complete, CONTRACTOR will certify to OWNER and ENGINEER that such part of the Work is substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify OWNER and ENGINEER in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, OWNER, CONTRACTOR, and ENGINEER shall make an inspection of that part of the Work to determine its status of completion. If ENGINEER does not consider that part of the Work to be substantially complete, ENGINEER will notify OWNER and CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers that part of the Work to be substantially complete, the provisions of paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

2. No occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of paragraph 5.10 regarding property insurance.

14.06 *Final Inspection*

A. Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, ENGINEER will promptly make a final inspection with OWNER and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 *Final Payment*

A. Application for Payment

1. After CONTRACTOR has, in the opinion of ENGINEER, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance certificates of inspection, marked-up record documents (as provided in paragraph 6.12), and other documents, CONTRACTOR may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by subparagraph 5.04.B.7; (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to OWNER) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in paragraph 14.07.A.2 and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full and an affidavit of CONTRACTOR that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which OWNER or OWNER's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any Lien.

B. Review of Application and Acceptance

1. If, on the basis of ENGINEER's observation of the Work during construction and final inspection, and ENGINEER's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, ENGINEER is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, ENGINEER will, within ten days after receipt of the final Application for Payment, indicate in writing ENGINEER's recommendation of payment and present the Application for Payment to OWNER for payment. At the same time ENGINEER will also give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.09. Otherwise, ENGINEER will return the Application for Payment to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due

1. Thirty days after the presentation to OWNER of the Application for Payment and accompanying documentation, the amount recommended by ENGINEER will become due and, when due, will be paid by OWNER to CONTRACTOR.

14.08 Final Completion Delayed

A. If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed, and if ENGINEER so confirms, OWNER shall, upon receipt of CONTRACTOR's final Application for Payment and recommendation of ENGINEER, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by OWNER for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to ENGINEER with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 Waiver of Claims

A. The making and acceptance of final payment will constitute:

1. a waiver of all Claims by OWNER against CONTRACTOR, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from CONTRACTOR's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by CONTRACTOR against OWNER other than those previously made in writing which are still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.01 OWNER May Suspend Work

A. At any time and without cause, OWNER may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to CONTRACTOR and ENGINEER which will fix the date on which Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if CONTRACTOR makes a Claim therefor as provided in paragraph 10.05.

15.02 OWNER May Terminate for Cause

A. The occurrence of any one or more of the following events will justify termination for cause:

1. CONTRACTOR's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.07 as adjusted from time to time pursuant to paragraph 6.04);

2. CONTRACTOR's disregard of Laws or Regulations of any public body having jurisdiction;

3. CONTRACTOR's disregard of the authority of ENGINEER; or

4. CONTRACTOR's violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in paragraph 15.02.A occur, OWNER may, after giving CONTRACTOR (and the surety, if any) seven days written notice, terminate

the services of CONTRACTOR, exclude CONTRACTOR from the Site, and take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which OWNER has paid CONTRACTOR but which are stored elsewhere, and finish the Work as OWNER may deem expedient. In such case, CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by OWNER arising out of or relating to completing the Work, such excess will be paid to CONTRACTOR. If such claims, costs, losses, and damages exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such claims, costs, losses, and damages incurred by OWNER will be reviewed by ENGINEER as to their reasonableness and, when so approved by ENGINEER, incorporated in a Change Order. When exercising any rights or remedies under this paragraph OWNER shall not be required to obtain the lowest price for the Work performed.

C. Where CONTRACTOR's services have been so terminated by OWNER, the termination will not affect any rights or remedies of OWNER against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by OWNER will not release CONTRACTOR from liability.

15.03 *OWNER May Terminate For Convenience*

A. Upon seven days written notice to CONTRACTOR and ENGINEER, OWNER may, without cause and without prejudice to any other right or remedy of OWNER, elect to terminate the Contract. In such case, CONTRACTOR shall be paid (without duplication of any items):

1. for completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

3. for all claims, costs, losses, and damages (including but not limited to all fees and charges of

engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. for reasonable expenses directly attributable to termination.

B. CONTRACTOR shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *CONTRACTOR May Stop Work or Terminate*

A. If, through no act or fault of CONTRACTOR, the Work is suspended for more than 90 consecutive days by OWNER or under an order of court or other public authority, or ENGINEER fails to act on any Application for Payment within 30 days after it is submitted, or OWNER fails for 30 days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven days written notice to OWNER and ENGINEER, and provided OWNER or ENGINEER do not remedy such suspension or failure within that time, terminate the Contract and recover from OWNER payment on the same terms as provided in paragraph 15.03. In lieu of terminating the Contract and without prejudice to any other right or remedy, if ENGINEER has failed to act on an Application for Payment within 30 days after it is submitted, or OWNER has failed for 30 days to pay CONTRACTOR any sum finally determined to be due, CONTRACTOR may, seven days after written notice to OWNER and ENGINEER, stop the Work until payment is made of all such amounts due CONTRACTOR, including interest thereon. The provisions of this paragraph 15.04 are not intended to preclude CONTRACTOR from making a Claim under paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to CONTRACTOR's stopping the Work as permitted by this paragraph.

ARTICLE 16 - DISPUTE RESOLUTION

16.01 *Methods and Procedures*

A. Dispute resolution methods and procedures, if any, shall be as set forth in the Supplementary Conditions. If no method and procedure has been set forth, and subject to the provisions of paragraphs 9.09 and 10.05, OWNER and CONTRACTOR may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.

ARTICLE 17 - MISCELLANEOUS

17.01 *Giving Notice*

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 *Computation of Times*

A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.03 *Cumulative Remedies*

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 *Survival of Obligations*

A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Agreement.

17.05 *Controlling Law*

A. This Contract is to be governed by the law of the state in which the Project is located.